INDEX

	Page
Opinions below	2
Jurisdiction	2
Question presented	2
Statutes involved	2
Statement	3
Summary of argument	8
Argument:	
Introduction	10
I. Section 16 of the Alabama Act is incompatible with the National Labor Relations Act	12
II. Section 4 of the Florida Act is incompatible with the the National Labor Relations Act	23
III. The method of enforcement provided to implement Section 7 of the Alabama Act and Section 6 of the Florida Act is incompatible with the National Labor Relations Act	32
Appendix A, The Alabama Act	45
Appendix B, The Florida Act	50
Appendix C, The National Labor Relations Act	54

CITATIONS

Cases:	
A. S. Abell Company, Matter of, 54 N. L. R. B. 62	21
Alabama and V. Ry. v. *Jackson and E. Ry.*, 271 U. S. 244	22
Allen-Bradley Local v. *Wisconsin Employment Relations Board*, 315 U. S. 740	10, 30, 37, 41
Amalgamated Utility Workers v. *Cons. Edison Co.*, 309 U. S. 261	37
Armour and Co., Matter of, 49 N. L. R. B. 688	14
Baltic Mining Co. v. *Massachusetts*, 231 U. S. 68	43
Barron v. *Burnside*, 121 U. S. 186	43
Charleston & W. C. Ry. Co. v. *Varnville Co.*, 237 U. S. 597	23
Chicago v. *Fieldcrest Dairies*, 316 U. S. 168	40
Chrysler Corp., Matter of, 36 N. L. R. B. 157, 44 N. L. R. B. 881	14
Cincinnati Daily Newspaper Publishers Ass'n, Matter of, 55 N. L. R. B. 571	21
Cloverleaf Butter Co. v. *Patterson*, 315 U. S. 148	23, 26
Conn. General Life Ins. Co. v. *Johnson*, 303 U. S. 77	43
Cooney v. *Mountain States Tel. & Tel. Co.*, 294 U. S. 384	43
Country Life Press Corporation, Matter of, 51 N. L. R. B. 1362	21

Cases—Continued.

	Page
Dahnke-Walker Milling Co. v. *Bondurant*, 257 U. S. 282	43
Eagle-Picher Mining & Smelting Co. v. *National Labor Relations Board*, 119 F. (2d) 903	13
Eichholz v. *Public Service Commission*, 306 U. S. 268	23
Eppinger & Russell Co., Matter of, 56 N. L. R. B. 1259	26, 39
Fox Film Corp. v. *Doyal*, 286 U. S. 123	43
General Motors Corp., Matter of, 34 N. L. R. B. 1052	20
Godchaux Sugars, Inc., Matter of, 44 N. L. R. B. 874	20
Graves v. *O'Keefe*, 306 U. S. 466	43
W. F. Hall Printing Co., Matter of, 51 N. L. R. B. 640	21
Hazel-Atlas Glass Co v. *National Labor Relations Board*, 127 F. (2d) 109	13
H. J. Heinz Co. v. *National Labor Relations Board*, 311 U. S. 514	39
Hines v. *Davidowitz*, 312 U. S. 52	26
Hooper v. *California*, 155 U. S. 648	34
Jerome v. *United States*, 318 U. S. 101	37
Johnson v. *Maryland*, 254 U. S. 51	43
Jones & Laughlin Corp. v. *National Labor Relations Board*, decided January 18, 1945, (C. C. A. 5)	13, 22
Knight v. *Watson*, 221 Ala. 69	34
Leo Lichtenstein, et al., Matter of, 55 N. L. R. B. 1429	22
Marshall Field & Co., Matter of, 34 N. L. R. B. 1	20
Marx v. *Lining*, 231 Ala. 445	34
Maryland Drydock Co., Matter of, 49 N. L. R. B. 733	15, 16, 19, 20
Medo Photo Supply Corp. v. *National Labor Relations Board*, 321 U. S. 678	17
Midland Steamship Line, Inc., 53 N. L. R. B. 727	21
Mintz v. *Baldwin*, 289 U. S. 346	23
Missouri Pacific R. Co. v. *Porter*, 273 U. S. 341	22
Muskegon Dock & Fuel Co., Matter of, 58 N. L. R. B. 718	19
Napier v. *Atlantic Coast Line Railroad Co.*, 272 U. S. 605	22, 26
National Labor Relations Board v. *American Potash & Chemical Co.*, 98 F. (2d) 488, certiorari denied, 306 U. S. 643	13
National Labor Relations Board v. *Bradford Dyeing Ass'n*, 310 U. S. 318	17
National Labor Relations Board v. *Fruehauf Trailer Co.*, 301 U. S. 49	13
National Labor Relations Board v. *Hearst Publications*, 322 U. S. 111	37
National Labor Relations Board v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1	37
National Labor Relations Board v. *Luzuray, Inc.*, 123 F. (2d) 106	13
National Labor Relations Board v. *Remington Rand, Inc.*, 94 F. (2d) 862, certiorari denied, 304 U. S. 576, 585	17

Cases—Continued. Page

National Labor Relations Board v. *Richter's Bakery*, 140 F. (2d) 870 certiorari denied, 322 U. S. 754 13
National Labor Relations Board v. *Skinner & Kennedy Stationery Co.*, 113 F. (2d) 667 13
Northern Pacific Ry. Co. v. *Washington*, 222 U. S. 370 22
Northwestern Bell Telephone Co. v. *Nebraska State Ry. Commission*, 297 U. S. 471 23
Oregon-Washington R. & Nav. Co. v. *Washington*, 270 U. S. 87 22
Packard Motor Car Co., Matter of, 53 N. L. R. B. 875 14
Packard Motor Car Co., Matter of, Case No. 7-R-1848, decided March 26, 1945 ..... 15, 16, 21
Parker v. *Brown*, 317 U. S. 341 29
Pearl Assurance Co. v. *Harrington*, 313 U. S. 549 29
Pollock v. *Williams*, 322 U. S. 4 42
Proximity Mfg. Co., Matter of, 54 N. L. R. B. 1179 21
Railroad Comm'n. v. *Pullman Co.*, 312 U. S. 496 40
Rapinwax Paper Company, Matter of, 56 N. L. R. B. 1774 22
Service Printers, Inc., Matter of, 54 N. L. R. B. 1082 21
Sherwin-Williams Co., Matter of, 37 N. L. R. B. 260 20
Sioux Remedy Co. v. *Cope*, 235 U. S. 197 43
Soss Mfg. Co., Matter of, 56 N. L. R. B. 348 ..... 15, 20
St. Johns River Shipbuilding Co., 52 N. L. R. B. 12, 958, 55 N. L. R. B. 1451, 59 N. L. R. B. No. 83, 60 N. L. R. B. No. 55 11
State v. *Bynum*, 243 Ala. 138 34
State v. *Ellis*, 201 Ala. 295 34
Steele v. *Louisville & N. R. Co.*, No. 45, this Term, decided Dec. 18, 1944 ..... 16, 17
Sunflower Lumber Co. v. *Turner Supply Co.*, 158 Ala. 191 34
Tennessee Copper Co., Matter of, 9 N. L. R. B. 117 20
Terral v. *Burke Construction Co.*, 257 U. S. 529 43
Thomas v. *Collins*, No. 14, this Term, decided Jan. 8, 1945 ..... 10, 25, 30, 34
Thompson v. *Magnolia Co.*, 309 U. S. 478 40
Times-Mirror Co., Matter of, 54 N. L. R. B. 787 21
Todd Shipyards Corp., Matter of, 51 N. L. R. B. 1211 14
Truax v. *Raich*, 239 U. S. 33 29
Try-Me Bottling Co. v. *State*, 235 Ala. 207 34
Union Bag and Paper Corp., Matter of, 52 N. L. R. B. 591 21
Union Collieries Coal Co., Matter of, 41 N. L. R. B. 961 20
United States v. *American Bond & Mortgage Co.*, 31 F. (2d) 448, affirmed, 52 F. (2d) 318 34
United Wall Paper Factories, Inc., Matter of, 49 N. L. R. B. 1423 14
Wallace Corp. v. *N. L. R. B.*, No. 66, this Term, decided Dec. 18, 1944 ..... 16, 17

Cases—Continued. Page

Watkins, Matter of, 53 N. L. R. B. 235 19
Welch Co. v. New Hampshire, 306 U. S. 79 23
Western Union Tel. Co. v. Foster, 247 U. S. 105 43
Whitehead v. Coker, 16 Ala. App. 165 34
Whiting-Mead Co., Matter of, 45 N. L. R. B. 987 20

United States Statutes:

Fair Labor Standards Act, Sec. 13 (a) (1) 13
Internal Revenue Code, 53 Stat. 28, 26 U. S. C., § 54 (a), (b), and 53 Stat. 62, 26 U. S. C. § 145 40
National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, 29 U. S. C. 151, *et seq.*):
Section 1 ..... 36, 54
Section 2 ..... 13, 18, 25, 29, 55
Section 7 ..... 12, 16, 25, 57
Section 8 ..... 12, 17, 25, 36, 37, 57
Section 9 ..... 12, 17, 25, 36, 38, 57
Section 10 (a) 36, 58
Norris-LaGuardia Act, 47 Stat. 70, 29 U. S. C. § 102 27
Railway Labor Act, 48 Stat. 1185, 45 U. S. C. § 152 27
Railway Labor Act, Title II, 49 Stat. 1189, 45 U. S. C. § 181, *et seq* 27
Revenue Act of 1943, Title 1, § 117a, 58 Stat. 36, 26 U. S. C. A. § 54 (f) 40

State Statutes:

Alabama:
Bradford Act, Senate Bill No. 341, Acts of Alabama, 1943, No. 298, p. 253 (Code 1943, Tit. 26, Sec. 376, *et seq.*) 2
Sec. 1 45
Sec. 2 45
Sec. 7 ..... 3, 10, 31, 32, 33, 46
Sec. 16 ..... 3, 8, 46, 48
Sec. 18 ..... 3, 33, 48

Florida:
House Bill No. 142, Laws of Florida, 1943, Chapter 21968, p. 565 2
Sec. 1 50
Sec. 2 ..... 23, 50
Sec. 4 ..... 5, 9, 23, 27, 51
Sec. 6 ..... 5, 10, 33, 34, 52
Sec. 9 ..... 24, 52
Sec. 10 52
Sec. 14 ..... 5, 24, 27, 33, 53
Sec. 15 ..... 27, 53

Miscellaneous:

	Page
Code of Federal Regulations, Title 29, Part 541, Cum. Supp. 1944, Book 6, pp. 8603–5, 5 Fed. Reg. 4077, 7 Fed. Reg. 332	14
89 Cong. Rec. 1353	18
Daykin, *The Status of Supervisory Employees under the National Labor Relations Act*, 29 Iowa L. Rev. 297	20
58 Harv. L. Rev. 448, note	16
H. R. 1996, 78th Cong., 1st Sess.	18
McIver, Wagner, and McGirr, *Technologists' Stake in the Wagner Act* (1944)	14
Merrill, *Unconstitutional Conditions*, 77 U. of Pa. L. Rev. 879	43
United States Department of Labor, Wage and Hour Division, *"Executive, Administrative, Professional * * * Outside Salesmen" Redefined*, pp. 3–4, 24–26	14

In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 588

ALABAMA STATE FEDERATION OF LABOR, ET AL.,
PETITIONERS

v.

ROBERT E. McADORY, ET AL.

No. 855

CONGRESS OF INDUSTRIAL ORGANIZATIONS, ET AL.,
PETITIONERS

v.

ROBERT E. McADORY, ET AL.

ON WRITS OF CERTIORARI TO THE SUPREME COUR. OF THE STATE OF ALABAMA

No. 811

LEO H. HILL, ET AL., PETITIONERS

v.

STATE OF FLORIDA EX REL. J. TOM WATSON,
ATTORNEY GENERAL

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

OPINIONS BELOW

The opinion of the Supreme Court of the State of Alabama in No. 588 (R. 321–359) is reported at 18 So. (2d) 810; its opinion in No. 855 (R. 220) is reported at 20 So. (2d) 40. The opinion of the Supreme Court of the State of Florida in No. 811 (R. 26–35) is reported at 19 So. (2d) 857.

JURISDICTION

The jurisdiction of this Court is invoked under Section 237 (b) of the Judicial Code.

QUESTION PRESENTED

This brief is filed in response to the invitation of the Court to the Solicitor General. It is limited to discussion of the question whether Sections 7 and 16 of the Alabama Act and Sections 4 and 6 of the Florida Act can constitutionally coexist with the National Labor Relations Act.

STATUTES INVOLVED

The statutes involved are Senate Bill No. 341, Acts of Alabama, 1943, No. 298, page 253 (Code 1943, Tit. 26, Sec. 376, *et seq.*), known as the Bradford Act; House Bill No. 142, Laws of Florida, 1943, Chapter 21968, page 565; and the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C. Sec. 151, *et seq.*). The pertinent provisions of each statute are attached as appendices A, B, and C, respectively, to this brief, pp. 45, 50, 54, *infra*.

STATEMENT

No. 588.—In 1943 the Alabama Legislature enacted Senate Bill No. 341, known as the Bradford Act. Section 7 of that Act provides that any labor organization functioning in the State of Alabama must file a copy of its constitution and by-laws and those of its parent organizations with the State Department of Labor. Section 7 further provides that every labor organization functioning in Alabama must file annual reports with the Director of the Department of Labor containing the name and address of the organization; the names of its principal officers, the date of their election and the total compensation paid them; the number of paid-up members; the amount of all fees, dues and other receipts of the organization, together with a list of all disbursements made by the organization and the names of the recipients of such disbursements; and a complete statement of all assets of the organization. Section 16 provides that it shall be unlawful for "executive", "administrative", "professional" or "supervisory" employees to join or retain membership in labor organizations which either themselves or through their affiliates admit other classes of employees into membership. Section 18 provides that labor organizations which violate any provision of the Act shall be penalized by a fine of $1000.00 for each violation, and further declares that the doing of any act forbidden by the statute,

636366—45——2

except where a penalty is otherwise specifically provided, shall constitute a misdemeanor punishable by fine or imprisonment, or both.

On October 13, 1943, petitioners in No. 588 filed a petition in the Circuit Court of Jefferson County, Alabama, pursuant to the Alabama Declaratory Judgment Statute (Code 1940, Tit. 7, Secs. 156–168), for adjudication of the validity of the Bradford Act (R. 1–24). Petitioners contended that the Act was unconstitutional, because, *inter alia,* it was in conflict with the provisions of the National Labor Relations Act (R. 8). On March 4, 1944, after hearing, the Circuit Court issued its decision holding that Section 7 of the Act was constitutional and valid, that certain other sections were unconstitutional, and refusing to pass upon the validity of Sections 15 and 16 (R. 221–224). Upon appeal the Supreme Court of Alabama considered the constitutional questions presented by petitioners (R. 318), and on May 25, 1944, entered its opinion and judgment affirming the decision of the Circuit Court and holding in addition that Sections 15 and 16 of the Bradford Act were constitutional (R. 320–353). Two judges dissented (R. 353–358). On June 22, 1944, the court denied petitioners' motion for rehearing (R. 358–359, 360).

No. 855.—The declaratory judgment action by petitioners in No. 855, challenged Sections 7 and 16 of the Bradford Act on grounds identical with

those relied upon by petitioners in No. 588 (R. 2–26). On December 7, 1944, the Supreme Court of Alabama entered its opinion (R. 220) affirming the judgment of the Circuit Court and rejecting petitioners' contentions on the authority of *Alabama State Federation of Labor, et al.* v. *McAdory, et al.*, 18 So. (2d) 810.

No. 811.—House Bill No. 142, enacted by the Florida Legislature in 1943, prohibits any person who receives financial compensation from a labor organization from acting on its behalf in issuing union membership or application cards, engaging in collective bargaining, or adjusting employee grievances, without having obtained a license from the State. Section 4 of the Act provides that a license so to act as "business agent" shall not be issued to persons who have not been resident citizens of the United States for at least 10 years, or who have been convicted of a felony, or who are not of good moral character. Licenses are not to be granted within thirty days of the filing of the application. Section 6 of the Act provides that any labor organization operating in the State of Florida shall annually file with the Secretary of State a report disclosing the name and address of the organization and the names of its principal officers. Section 14 provides that any person or labor organization found to have violated any provision of the Act shall be punished by fine or imprisonment, or both.

On October 8, 1943, the Attorney General of the State of Florida filed a complaint in the Circuit Court of Duval County, Florida, against petitioners in No. 811, alleging that petitioners had not complied with the provisions of House Bill No. 142 and seeking to enjoin petitioner United Association of Journeymen Plumbers and Steamfitters of United States and Canada, Local No. 234 "from operating as a union," and to enjoin petitioner Hill from "acting as business agent" for the Association unless and until petitioners fully complied with the provisions of the Act (R. 1–3). In answer to the complaint (R. 4–15) petitioners alleged that House Bill No. 142 was unconstitutional for the reason, among others, that its provisions were in conflict with the National Labor Relations Act (R. 10). The cause was submitted on the pleadings (R. 16–17), and on June 22, 1944, the Circuit Court filed its final decree holding that questions were properly presented only with regard to Sections 4 and 6 of the Florida Act, and that these sections, with the exception of a phrase appearing in Section 4 which the court held invalid,[1] were constitutional. The court enjoined the defendant Association "from functioning and operating as a labor organization or labor union" until it complied with the requirements of Section 6, and enjoined the defendant

[1] This phrase is italicized in the copy of the Act which appears in the Appendix to this brief (*infra*, p. 52).

Hill "from acting as business agent for" the Association until he procured a license as required by Section 4 (R. 18–19). On June 27, 1944, petitioners appealed to the Supreme Court of Florida (R. 19–23). On November 28, 1944, the Supreme Court of Florida entered its opinion (R. 26–35) and judgment (R. 35) affirming the ruling of the lower court. In reply to petitioners' contention that Sections 4 and 6 of the Florida Act were inconsistent with the provisions of the National Labor Relations Act, the court said (R. 34):

> This contention proceeds on the presumption that the National Labor Relations Act preempts the field of labor regulation and removes any power on the part of the states to do so. If appellants' contentions were true, the National Labor Relations Act rather than the Act in question would go down under the Constitution. *National Labor Relations Board* vs. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 57 Sup. Ct. 615 81 L. Ed. 893; *Wisconsin Labor Relations Board* vs. *Fred Ruepling* [sic] *Leather Co.*, 228 Wis. 473, 279 N. W. 673. In both these cases it was held that the power of Congress to regulate labor relations rested on the commerce clause while the power of the State rested on the police power and that the State power was supreme when (fol. 52) no undue burden was laid on interstate commerce. Unless interstate commerce is obstructed, the Federal Act may not be called into operation.

SUMMARY OF ARGUMENT

I

Section 16 of the Alabama act makes it unlawful for supervisory, administrative and professional employees to join unions affiliated with organizations admitting to membership rank and file employees. The National Labor Relations Act grants administrative and professional employees who exercise no supervisory powers, the right to form, join and be represented by unions of their own choosing even though they admit to membership nonadministrative and nonprofessional employees. Therefore, as to administrative and professional employees in a nonsupervisory capacity who are subject to the national statute, the Alabama act is clearly incompatible with the national Act.

The national Board has consistently protected the right of supervisors, like all other employees, to join any union without discrimination by their employer to discourage such membership. In some industries the Board does not segregate supervisory from rank and file employees for bargaining purposes. In other industries, while the Board for a time refused to certify as the representatives of supervisory employees, unions affiliated with organizations admitting nonsupervisory employees to membership, it has recently stated that its policy respecting this matter is open for reconsideration. The Alabama statute is in definite conflict with national law in respect to supervisory employees

in those industries in which the Board has found no need to treat supervisory employees differently from nonsupervisory employees. In respect to other industries, Congress did not intend that any agency but the Board should place limitations on the composition of unions representing supervisory employees. The federal law, therefore, has completely occupied the field.

II

Section 4 of the Florida law prohibits any person from bargaining on behalf of employees until he has received a state license. This constitutes a regulation of collective bargaining, limiting the class of those who may bargain, in contravention of the national statute which contains no such qualification. The national Board has held that failure of a union business agent to comply with this restriction does not afford an employer a basis for refusing to bargain with the business agent. The Florida act also requires a delay of at least thirty days before a license may be allowed, thereby interfering with the prompt settlement of disputes through collective bargaining as contemplated by the national statute. In addition it bars from collective bargaining citizens of the United States of less than ten years' standing, and citizens who have not resided in the United States for the preceding ten years, limitations not recognized in the national law. In all of these respects the Florida act impedes collective bargaining. It does not resemble

the Texas statute involved in *Thomas* v. *Collins*. On the contrary it impairs rights guaranteed by Congress, and is therefore invalid. Cf. *Allen-Bradley Local* v. *Wisconsin Employment Relations Board*, 315 U. S. 740, 750–751.

III

Section 7 of the Alabama act and Section 6 of the Florida act require that labor organizations file certain reports with the state authorities. We do not contest the validity of such substantive requirements. But Florida has claimed, and Alabama is likely to claim, the power to enforce these provisions by depriving an organization of its right to bargain until the reports are filed. The national Act unconditionally requires an employer to bargain with the representative of his employees. Enforcement of the state laws by means of a prohibition against bargaining thus directly interferes with compliance with the federal statute, although other sanctions would not have the same effect. In our opinion, the sections dealing with reports are incompatible with the national Act to the extent that their enforcement is secured by means of enjoining or rendering criminal collective bargaining, or voiding contracts resulting from collective bargaining.

ARGUMENT

INTRODUCTION

The National Labor Relations Act applies only to employment relations affecting interstate or for-

eign commerce. The state laws involved in these cases are applied to employees and labor organizations whose activities are and are not reached by the federal statute. Inasmuch as we are concerned only with the effect of the laws upon the enforcement of the national Act, the arguments presented herein are to be considered as addressed solely to employment relations covered by that statute. The records in the Alabama cases show that the petitioning unions, or some of them, fall within that category. (No. 588, R. 236, 253–254, 304; No. 855, R. 82–83.) This does not affirmatively appear in the Florida case, although the complaint filed by the State prayed that the petitioners be enjoined from "operating as a union" with respect to any person or persons employed by the St. Johns River Shipbuilding Company of Jacksonville, Florida (R. 3). The National Labor Relations Board has held that this company is engaged in interstate commerce and is subject to the National Labor Relations Act. *Matter of St. Johns River Shipbuilding Co.*, 52 N. L. R. B. 12; *ibid.*, 52 N. L. R. B. 958; *ibid.*, 55 N. L. R. B. 1451; *ibid.*, 59 N. L. R. B. No. 83; *ibid.*, 60 N. L. R. B. No. 55. Furthermore, the Florida Supreme Court has treated the case as if the national Act were applicable (R. 34). Accordingly, we shall deal with the case on the same basis, and assume that it involves employees subject to the federal law.

I

SECTION 16 OF THE ALABAMA ACT IS INCOMPATIBLE WITH THE NATIONAL LABOR RELATIONS ACT

Section 16 of the Alabama Act provides that:

> It shall be unlawful for any executive, administrative, professional, or supervisory employee to be a member in, or to be accepted for membership by, any labor organization, the constitution and by-laws of which permit membership to employees other than those in executive, administrative, professional, or supervisory capacities, or which is affiliated with any labor organization which permits membership to employees other than those in an executive, administrative, professional, or supervisory capacity.

Unions and individuals violating this section are subject to the penalties prescribed in Section 18.

The National Labor Relations Act provides (§ 7) that "employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing." Section 8 (5) makes it an unfair labor practice for an employer "to refuse to bargain collectively with the representatives of his employees". Section 9 (b) authorizes the Board to define units appropriate for collective bargaining, and Section 9 (c) empowers the Board to certify collective bargaining representatives selected by employees in such units.

None of these provisions of the National Act contains any exemption for executive, administrative, professional or supervisory employees. On the contrary, Section 2 (3) defines "employee" to "include any employee". The Board and the courts have often held that the term "employee" includes persons in executive, administrative, professional and supervisory capacities.[2] In so far as professional and administrative[3] employees who are not executives or supervisors are con-

[2] See e. g., *National Labor Relations Board* v. *Skinner & Kennedy Stationery Co.*, 113 F. (2d) 667, 670–671 (C. C. A. 8), enforcing 13 N. L. R. B. 1186; *National Labor Relations Board* v. *American Potash & Chemical Co.*, 98 F. (2d) 488, 493–494 (C. C. A. 9), enforcing 3 N. L. R. B. 140, certiorari denied, 306 U. S. 643; *National Labor Relations Board* v. *Luzuray, Inc.*, 123 F. (2d) 106, 108–109 (C. C. A. 2), enforcing 16 N. L. R. B. 37, as amended by 18 N. L. R. B. 945; *National Labor Relations Board* v. *Richter's Bakery*, 140 F. (2d) 870 (C. C. A. 5), enforcing 46 N. L. R. B. 447, certiorari denied, 322 U. S. 754; *Eagle-Picher Mining & Smelting Co.* v. *National Labor Relations Board*, 119 F. (2d) 903, 911 (C. C. A. 8), enforcing 16 N. L. R. B. 727; *Hazel-Atlas Glass Co.* v. *National Labor Relations Board*, 127 F. (2d) 109 (C. C. A. 4), enforcing 34 N. L. R. B. 346; *Jones & Laughlin Steel Corp.* v. *National Labor Relations Board*, decided January 18, 1943 (C. C. A. 5), enforcing 54 N. L. R. B. 679; cf. *National Labor Relations Board* v. *Fruehauf Trailer Co.*, 301 U. S. 55, enforcing 1 N. L. R. B. 68, 76, 79, 80.

[3] It is not clear whether "administrative" covers employees who are not "executive" or "supervisory". The Alabama Attorney General in his brief below in No. 588 (p. 57) has suggested that these terms were adopted from Section 13 (a) (1) of the Fair Labor Standards Act, which exempts any employee employed in a bona fide "executive, administrative, professional * * * capacity * * * (as such terms

cerned, the Board has held without qualification that their status did not require them to be treated differently from any other employee, and the same is true even of supervisory employees in some industries. In particular the Board has often protected the right of unions composed chiefly of rank and file to admit such persons to membership and to bargain collectively for them, and, conversely, the latter's right to join and be represented by such organizations.[4] The Board has held, however, that

---

are defined and delimited by regulations of the Administrator)". Upon the basis of a report in which it was recognized that "executive" and "administrative" were overlapping terms but in which it was concluded that "administrative" was intended to include work involving the general exercise of independent discretion but not the authority to supervise others, the Administrator has defined the terms separately and in a way which indicates that some administrative employees would not be executives. Code of Federal Regulations, Title 29, Part 541 (Cum. Supp. 1944, Book 6, pp. 8603-5), 5 Fed. Reg. 4077, 7 Fed. Reg. 332; United States Department of Labor, Wage and Hour Division, "*Executive, Administrative, Professional * * * Outside Salesmen" Redefined* (Report and Recommendations of the Presiding Officer October 24, 1940), pp. 3-4, 24-26.

[4] As to administrative and professional employees, see e. g., *Matter of Packard Motor Car Co.*, 53 N. L. R. B. 875, 877; *Matter of Chrysler Corp.*, 36 N. L. R. B. 157, 159-160; *Matter of Chrysler Corp.*, 44 N. L. R. B. 881, 883-887; *Matter of United Wall Paper Factories, Inc.*, 49 N. L. R. B. 1423, 1425-1426; *Matter of Todd Shipyards Corp.*, 51 N. L. R. B. 1211, 1213-1214; *Matter of Armour and Co.*, 49 N. L. R. B. 688, 690-691. The names of organizations admitting administrative and professional employees into membership, and cases in which the Board has certified various labor organizations as exclusive bargaining representatives for these classes of employees are collected in McIver, Wagner, and

although supervisory employees in all industries are employees within the meaning of the Act and protected against discrimination under Section 8 (1) and (3), there may be some qualifications in many industries respecting the affiliation of unions which the employer must recognize as statutory agents for supervisory employees. *Matter of Packard Motor Car Co.*, Case No. 7–R–1884, decided March 26, 1945; *Matter of Soss Mfg. Co.*, 56 N. L. R. B. 348; *Matter of Maryland Drydock Co.*, 49 N. L. R. B. 733.

There can be no doubt, we think, that the Alabama Act is in conflict with the federal statute

---

McGirr, *Technologists' Stake in the Wagner Act* (1944). See particularly, pp. 120–154, 167–170, 243–245. While, as the authors point out, *ibid.* pp. 120–154, the Board has often found that separate units of various types of professional or administrative employees, such as engineers, chemists, plant guards, office and clerical employees are appropriate for collective bargaining, it has always recognized and protected the right of employees in such units to join and to be represented by unions which represent rank and file employees. In discussing Section 16 of the Alabama Act the authors comment as follows (*ibid.* p. 29): "Alabama in 1943, disregarding the scope of the National Labor Relations Act, especially as regards its complete coverage of cases 'affecting commerce,' and also the Board's wide and final discretion in determining appropriate units, which includes the right to define 'professional workers' and its right to certify representatives, passed a law which includes this significant provision: [quoting Section 16].

"This procedure amounts to 'nullification' of a Federal statute—an issue which was closed back in the days of John C. Calhoun. It attempts to amend the Wagner Act for the State of Alabama, excluding from the jurisdiction of the National Labor Relations Board workers most clearly brought within its scope of authority by the Act."

in so far as it relates to the professional and administrative employees who have no supervisory functions and also to supervisory[5] employees in industries where the Board does not differentiate them from other employees. These employees under the express language of the Act have the right to join unions of their own choosing.[6] The Board and the courts have uniformly held that the Act gives these employees the right to join unions admitting other types of employees. Moreover, if the Board defines a bargaining unit as including both professional and other employees, and certifies a particular union as its representative, that union would be

[5] As to supervisory employees in certain industries, see *Matter of Maryland Drydock Co.*, 49 N. L. R. B. 733, 741, and cases cited n. 12, *infra*, p. 21. We shall hereinafter use the word "supervisory" to include both executive and supervisory employees as well as those administrative employees who act in a supervisory capacity. In practice, problems in labor relations have so far arisen only for such inferior supervisory employees as foremen, and not for persons ordinarily regarded as executives. Cf. *Matter of Packard Motor Car Co.*, Case No. 7-R-1884, decided March 26, 1945.

[6] Section 7 provides that employees shall have the "right to * * * join * * * labor organizations, [and] to bargain collectively through representatives *of their own choosing*". Whether the italicized phrase is applicable to the right to join, as distinct from the right to bargain, as a matter of grammar, clearly it was intended that both rights be equally sweeping.

There is presented here, of course, no question concerning the right of a labor organization, whatever its scope may be, to exclude from membership persons hostile to their interests. Cf. the *Wallace* and *Steele* cases, *infra*. See Note (1945) 58 Harv. L. Rev. 448, 453–454.

entitled under the federal statute to bargain on behalf of all the employees in the unit. Indeed, the obligation imposed by Section 8 (5) exists irrespective of a certification by the Board.[1] Although the national Act does not require that all employees in a bargaining unit be members of the organization representing them, it certainly contemplates that they shall have the right to participate in the affairs and administration of the bargaining representative—a right normally exercised and safeguarded by union membership. See *Wallace Corp.* v. *National Labor Relations Board*, No. 66, this Term, decided December 18, 1944. Cf. *Steele* v. *Louisville & N. R. Co.*, No. 45, this Term, decided December 18, 1944. Furthermore, the State law in effect fixes the units in which these employees may bargain on the basis of the type of work they perform. The national Board is authorized by Section 9 (b) to determine the appropriate bargaining unit, and one of the factors which it invariably considers is the type of work performed by the employees in question. The state restriction thus operates in a field plainly covered under the national Act.

The Alabama statute, which imposes severe penalties on both the employee covered by Section

[1] *Medo Photo Supply Corp.* v. *National Labor Relations Board*, 321 U. S. 678; *National Labor Relations Board* v. *Bradford Dyeing Ass'n*, 310 U. S. 318, 338–340; *National Labor Relations Board* v. *Remington Rand, Inc.*, 94 F. (2d) 862, 868 (C. C. A. 2), certiorari denied, 304 U. S. 576, 585.

16 and the rank and file organization which admits him to membership, precludes such persons from joining the union which represents them, a result clearly inconsistent with the normal working of the federal Act as contemplated by Congress. And the state law equally clearly has deprived such employees of the right to join labor organizations of their own choosing guaranteed by Section 7 of the national statute.

The only explanation offered by the State of Alabama is found in the brief of the Attorney General of Alabama in the court below in the A. F. of L. case. It is there stated (p. 57) that "The terms 'executive,' 'administrative' and 'professional' employees appearing in Section 16 of the Bradford Act were apparently adopted from Section 13 (a) of the Fair Labor Standards Act, in which such classes are exempted from the provisions of that Act.". The Wagner Act, however, contains no similar exemption. Indeed, Congressman Smith of Virginia, on February 25, 1943, introduced a bill to amend the National Labor Relations Act by excluding from the definition of "employee" in Section 2 (3) of the Act "any individual employed in a bona fide executive, administrative, professional or supervisory capacity." H. R. 1996, 78th Cong., 1st Sess. The bill was referred to the Committee on Labor (89 Cong. Rec. 1353) and was never reported to the House.

As to supervisory employees in those industries where the Board has differentiated them from other employees in respect to the affiliation of the unions which it certifies as their statutory bargaining agents, the Alabama statute is likewise in conflict with federal law. They, no less than other employees, are guaranteed in the national statute the right to join labor organizations of their own choice subject to the reservation that their activities in behalf of such unions shall not interfere with the organizational freedom of subordinate employees. The alleged absence of inconsistency on which the state relies results from the Board's decision in *Matter of Maryland Drydock Co.*, 49 N. L. R. B. 733. There the Board held that conditions of self-organization in mass production industries had not sufficiently crystallized to warrant the certification of statutory bargaining agents for units composed of supervisory employees. The *Maryland Drydock* decision was not concerned with and did not in any way affect the right of supervisory employees to join unions of their own choosing, regardless of their affiliation or composition, a right which the Board has uniformly protected both before [8] and after [9] the *Maryland Drydock* decision, by holding that the discharge of a foreman because he be-

[8] See n. 2, p. 13, *supra*.

[9] *Matter of W. W. Watkins*, 53 N. L. R. B. 235, 236–237, 242, 247; *Matter of Muskegon Dock & Fuel Co.*, 58 N. L. R. B. 718.

longed to a rank and file union was an unfair labor practice [10] and by requiring the employer to make reinstatement with back pay.[11]

The Board had also, prior to the *Maryland Drydock* decision, certified representatives for units of supervisors. See, e. g., *Matter of Union Collieries Coal Co.*, 41 N. L. R. B. 961, 965–968; *Matter of Godchaux Sugars, Inc.*, 44 N. L. R. B. 874, 877. Cf. *Matter of Tennessee Copper Co.*, 9 N. L. R. B. 117, 119. In the *Maryland Drydock* decision a majority of the Board overruled these earlier holdings respecting the certification of units of supervisors. The problem was subsequently reexamined by the Board in *Matter of Soss Mfg. Co.*, 56 N. L. R. B. 348 (1944), and the Board held that the *Maryland Drydock* doctrine did not deprive supervisory employees of

[10] See *Matter of Whiting-Mead Co.*, 45 N. L. R. B. 987, 1003, 1015–1018, now pending before the Circuit Court of Appeals for the Ninth Circuit, where the Board ordered reinstatement of a foreman discharged for joining a rank and file union. There it appeared that the employer had discharged the foreman not to preserve the employer's neutrality but because of hostility to the union.

[11] During this period the Board permitted employers to protect themselves against charges of unfair labor practices by demoting supervisors who were unduly active in labor organizations of rank and file employees. See *Matter of Sherwin-Williams Co.*, 37 N. L. R. B. 260, 278–280; *Matter of General Motors Corp.*, 34 N. L. R. B. 1052, 1059–1064; *Matter of Marshall Field & Co.*, 34 N. L. R. B. 1. The development of Board policy in this field is traced in Daykin, *The Status of Supervisory Employees Under the National Labor Relations Act*, 29 Iowa L. Rev. 297.

protection against discrimination for union activity. Upon further reconsideration, in *Matter of Packard Motor Car Co.*, Case No. 7–R–1884, decided March 26, 1945, the Board overruled the *Maryland Drydock* case in so far as it applied to unions of supervisory employees not affiliated with rank and file organizations, and expressly left open the question of representation of supervisory employees by other types of unions.

This line of decisions demonstrates that the Board's doctrine is still in course of evolution, and that the subject is one upon which the Board is continually exercising discretion in determining how the policies of the federal statute may best be achieved. Furthermore, even the *Maryland Drydock* decision explicitly recognized that in various trades where foremen have long been admitted to union membership, a different result is justified (49 N. L. R. B., at 741).[12] The group

[12] Since its decision in the *Maryland Drydock* case the Board has consistently found that supervisory employees in certain trades were appropriately included in the same unit with rank and file employees and that they could, of course, be represented by the same organization as their subordinates. See, *Matter of Midland Steamship Line, Inc.*, 53 N. L. R. B. 727; *Matter of W. F. Hall Printing Co.*, 51 N. L. R. B. 640; *Matter of Country Life Press Corporation*, 51 N. L. R. B. 1362; *Matter of Union Bag and Paper Corporation*, 52 N. L. R. B. 591; *Matter of The A. S. Abell Company*, 54 N. L. R. B. 62; *Matter of The Times-Mirror Company*, 54 N. L. R. B. 787; *Matter of Service Printers, Inc.*, 54 N. L. R. B. 1082; *Matter of Proximity Mfg. Co.*, 54 N. L. R. B. 1179; *Matter of Cincinnati Daily Newspaper Publishers*

of industries so treated may, of course, be modified by the Board as circumstances change. It thus appears that the Board's policy in this field is flexible, properly responding to the facts in the cases coming before it.

This analysis indicates that Congress in the National Labor Relations Act has formulated the general principle that all employees may join any organization they choose. In so far as the right to recognition as a statutory bargaining agent may be subject to limitation,[13] Congress obviously did not intend that that limitation be established by any agency but the national Board. It is therefore correct to say in this case that the federal statute has completely occupied the field, and that no room is left for state regulation whether or not in conflict with the federal law.[14] "When Congress has taken the particular subject-

---

Ass'n, 55 N. L. R. B. 571; *Matter of Leo Lichtenstein, et al.*, 55 N. L. R. B. 1429; *Matter of Rapinwax Paper Company*, 56 N. L. R. B. 1774. Compare *Jones & Laughlin Corp.* v. *National Labor Relations Board*, decided January 18, 1945 (C. C. A. 5). See also, National Labor Relations Board, *Eighth Annual Report* (Gov't Print. Off. 1944), pp. 55–57.

[13] No one is here challenging the power of the Board to establish this limitation. The State's argument that there is no conflict with the federal Act must be predicated on the assumption that the Board has the authority which it has exercised.

[14] *Napier* v. *Atlantic Coast Line Railroad Co.*, 272 U. S. 605; *Oregon-Washington R. & Nav. Co.* v. *Washington*, 270 U. S. 87; *Alabama and V. Ry.* v. *Jackson and E. Ry.*, 271 U. S. 244; *Missouri Pacific R. Co.* v. *Porter*, 273 U. S. 341; *Northern Pacific Ry. Co.* v. *Washington*, 222 U. S. 370.

matter in hand coincidence is as ineffective as opposition * * *". *Charleston & W. C. Ry. Co.* v. *Varnville Co.*, 237 U. S. 597, 604; *Cloverleaf Butter Co.* v. *Patterson*, 315 U. S. 148, 169. The cases holding that a federal statute will not supersede a state law before the federal administrative agency has acted [15] are predicated on a congressional intention not to leave a subject completely unregulated prior to the administrative determination. But here Congress did not intend to allow the states to create exceptions to the broad provisions of the federal statute (compare Section 10 (a)). Moreover, the National Board has long since exercised its jurisdiction over the subject matter of employer-supervisor relationships.

II

SECTION 4 OF THE FLORIDA ACT IS INCOMPATIBLE WITH THE NATIONAL LABOR RELATIONS ACT

Section 4 of the Florida Act prohibits any person from acting as a "business agent" in the State of Florida without having procured a license from state authorities. The term "business agent," as defined in Section 2, subsection (2) of the Act, means "any person, without regard to title, who shall for a pecuniary or financial consideration, act or attempt to act for any 'labor

[15] *Welch Co.* v. *New Hampshire*, 306 U. S. 79; *Eichholz* v. *Public Service Commission*, 306 U. S. 268; *Mintz* v. *Baldwin*, 289 U. S. 346; *Northwestern Bell Telephone Co.* v. *Nebraska State Ry. Commission*, 297 U. S. 471.

organization' in (a) the issuance of membership, or authorization cards, work permits, or any other evidence of rights granted or claimed in, or by, a labor organization, or (b) in soliciting or receiving from any employer any right or privilege for employees." Section 4 further provides that no person shall be licensed to act as a business agent "(1) who has not been a citizen of and has not resided in the United States of America for a period of more than ten years next prior to making application for such license or permit. (2) Who has been convicted of a felony. (3) Who is not a person of good moral character * * *" Applications for licenses are to be held by the Secretary of State for thirty days, and then submitted to a board for determination; licenses are to be obtained annually. Any person who acts as a business agent "without having obtained and possessing a valid and subsisting license" (Section 9 (6)) is, by Section 14 of the Act, rendered liable upon conviction to fine and imprisonment. In addition, as the instant case demonstrates (*supra*, pp. 6–7), unlicensed persons may be enjoined from acting as "business agents."

Clause (b) of the definition of "business agent" describes all persons who bargain for employees, inasmuch as anyone who bargains would be soliciting or receiving rights or privileges for employees. In the light of this definition, Section 4 prohibits any person who acts for compensation from bar-

gaining collectively until he has been granted a state license. Although licenses are required only of individuals and not of labor organizations, an individual may be a representative, and organizations can act only through individuals. The section thus differs from the Texas statute involved in *Thomas* v. *Collins*, decided January 8, 1945, which did not condition the right to collective bargaining but only the right to solicit members.[16]

The National Labor Relations Act guarantees employees the right to bargain collectively through representatives of their own choosing (Section 7). "Representative" is defined to include "any individual or labor organization" (Section 2 (4)). Employers are required to bargain with the representatives chosen by a majority of the employees (Sections 8 (5) and 9).

We think that this Florida restriction upon collective bargaining is incompatible with the national statute because of three provisions which taken separately, and even more clearly in combination, impair the right to collective bargaining guaranteed by the national Act.

(1) In the first place, and most importantly, the Florida Act would prohibit employees from bargaining through a representative whom the employees had a right to select under the national Act, and with whom the employer was bound to deal. The restriction which Section 4 imposes

[16] *Thomas* v. *Collins* is also discussed at p. 30, *infra*.

constitutes a regulation of bargaining itself, inasmuch as it limits the class of those who may bargain." In *Matter of Eppinger & Russell Co.*, 56 N. L. R. B. 1259, the employer sought to justify his refusal to bargain with an authorized representative of a labor organization which the Board had previously certified pursuant to Section 9 (c) on the ground that the union representative had not obtained a license as required by the Florida Act and, therefore, could not lawfully engage in collective bargaining. Addressing itself to the question "whether Congress meant that the duty of employers to bargain, as provided in Section 8 (5) of the Act, should turn on the requirements of State legislation," the Board pointed out that while "No doubt Congress could have so provided, even though this would have subjected the enforcement of legislation national in scope to the varied and perhaps conflicting provisions of State enactments; * * * we find nothing in the language of the Act or its legislative history which warrants the belief that Congress in fact did so provide." The Board therefore concluded, following the familiar rule of *Hines* v. *Davidowitz*, 312 U. S. 52, 66–68, *Cloverleaf Butter Co.* v. *Patterson*, 315 U. S. 148, *Napier* v. *Atlantic C. L. R. Co.*, 272 U. S. 605, and similar cases, that the

[17] It thus differs from the denial of the right to bargain as a sanction in enforcing a regulation substantively valid. As to such an interference with the federal right, see Point III, pp. 32–44, *infra*.

"State law must yield before the paramount authority of Congress expressed in a valid and applicable Federal law."

The State has suggested (Br. in opp. p. 12) that there is no interference with the national Act because Section 4 does not give an employer the right to refuse to bargain or to otherwise comply with the National Labor Relations Act, or the Board's orders thereunder, because a business agent of the employees' union has not qualified under the State Act." But the section, with the penalties contained in Section 14, subjects any employee representative who bargains without the license to fine and imprisonment. The bargaining contemplated by the federal Act [18] is a two-sided process which can be destroyed just as thoroughly by a prohibition directed to the labor representative as by an order to the employer. The resultant interference with compliance with Section 8 (5) is the same in either event.

(2) The Florida law provides that the Secretary of State shall hold applications for licenses as business agents for thirty days to permit the filing

[18] Other federal statutes also manifest the congressional policy of encouraging employees to bargain collectively through representatives of their own choice. See the Norris-LaGuardia Act, 47 Stat. 70, 29 U. S. C. § 102; Railway Labor Act, 48 Stat. 1185, 45 U. S. C. § 152. Although the Florida act exempts "railway labor organizations" (Sec. 15), it does not exempt organizations of employees of air carriers covered by Title II of the Railway Labor Act (49 Stat. 1189, 45 U. S. C. § 181, *et seq.*).

of objections, and that thereafter the application be submitted to a Board composed of the Governor and two other officials. This will undoubtedly mean that a period considerably longer than thirty days will be necessary before an application is passed on. During this time, collective bargaining with or through the applicant would be unlawful, even though it might be required by the national statute.

The purpose of federal legislation requiring collective bargaining is to prevent labor disputes obstructing commerce. When disputes arise, there must be no artificial barrier to settlement if this object is to be achieved; in particular, it is important that bargaining be promptly commenced. Even if a licensing requirement would be valid if the license could be secured promptly and without such delay as would seriously interfere with the bargaining process, the Florida statute is not of that sort. In the case of a newly chosen representative or new union official designated to participate in the bargaining and thus not previously licensed, the Florida act necessitates a delay of at least one month before they may act. This impediment obstructs in a substantial sense the bargaining which the National Labor Relations Act requires.

(3) The Florida statute limits the class of persons to whom rights to bargain may be granted. Licenses may not be granted convicted felons, persons not of good moral character, or persons

who have not been both citizens and residents of the United States during the ten years preceding the application. If we assume that a State has the power to exclude some types of persons from those whom employees may designate as bargaining agents, a limitation apparently not contemplated in the national Act's inclusive definition,[19] its power to do so must depend upon the extent of the interference with the policy of the national statute which will be produced by the exclusion, as compared to the local interest served. Cf. *Parker* v. *Brown*, 317 U. S. 341, 362. Under this test, the felony restriction might stand, and also that as to moral character, although the validity of the latter might depend on how that very general phrase is construed. And conceivably, the State might require business agents to be citizens. Cf. *Truax* v. *Raich*, 239 U. S. 33, with *Pearl Assurance Co.* v. *Harrington*, 313 U. S. 549, affirming 38 F. Supp. 411 (D. Mass.). But the prohibition as to citizens of less than ten years standing, and as to all citizens who have not resided in the United States during the preceding ten years would appear to restrict the employees' field of selection without any observable benefit to the people of Florida. We see no reasonable basis for assuming that all persons who have been American citizens for less than ten years are not to be trusted to act as labor representatives. And the same is true as to natural-born citizens, and

[19] See Section 2 (4), *supra*, p. 25.

those naturalized more than ten years in the past, who may have happened to reside in a foreign country (i. e., Canada, Mexico, England, as well as other nations) at any time within the preceding ten years. No such conditions were thought necessary by Congress.

In *Thomas* v. *Collins*, decided January 8, 1945, a majority of the Court were of the view that Section 5 of the Texas law involved in that case and the application there made of it did not conflict with the National Labor Relations Act (Slip-sheet pp. 19–20). That section merely required the obtaining of an identification card from the Secretary of State before soliciting members. It did not require a license prior to engaging in collective bargaining. It did not provide for at least a month's delay in the issuance of licenses. It did not bar classes of law abiding citizens from obtaining licenses.[20] Indeed the State authorities interpreted the Act as giving the Secretary of State only ministerial power (Op. slipsheet pp. 7, 16, 19).

In all of these respects the Florida law impedes collective bargaining, whereas the Texas law did not. The present case is thus not similar to *Thomas* v. *Collins*. It would appear, on the other hand, to come within the reservation recognized in the Court's opinion in *Allen-Bradley Local* v.

[20] Section 4a of the Texas law prohibited only convicted felons or aliens from being labor union officers or organizers.

Wisconsin Employment Relations Board, 315 U. S. 740, a decision upholding the provisions of the Wisconsin Act prohibiting violence by employees. The Court there stated that (315 U. S. at 751):

> * * * If the order of the state Board affected the status of the employees, or if it caused a forfeiture of collective bargaining rights, a distinctly different question would arise. * * *
>
> * * * It has not been shown that any employee was deprived of rights protected or granted by the federal Act or that the status of any of them under the federal Act was impaired.

The opinion also declared (p. 750):

> * * * And we fail to see how the inability to utilize mass picketing, threats, violence, and the other devices which were here employed impairs, dilutes, qualifies or in any respect subtracts from any of the rights guaranteed and protected by the federal Act. Nor is the freedom to engage in such conduct shown to be so essential or intimately related to a realization of the guarantees of the federal Act that its denial is an impairment of the federal policy.

We think that Section 4 of the Florida law definitely impairs rights granted by the National Labor Relations Act, and that, accordingly, insofar as it applies to labor relations covered by the national statute, it is invalid.

III

THE METHOD OF ENFORCEMENT PROVIDED TO IMPLEMENT SECTION 7 OF THE ALABAMA ACT AND SECTION 6 OF THE FLORIDA ACT IS INCOMPATIBLE WITH THE NATIONAL LABOR RELATIONS ACT

The Alabama statute provides that a labor organization "functioning" in the state must comply with certain conditions set forth in Section 7 of the Act (R. 334). These conditions consist of the filing of a copy of its constitution and by-laws and those of its parent organization with the State Department of Labor. In his brief in *American Federation of Labor* v. *McAdory* in the court below the Attorney General of Alabama construed the statute as prohibiting labor organizations from functioning or doing business in Alabama unless and until they have complied with those conditions.[21] The term "functioning," as construed by the Supreme Court of Alabama (No. 588; R. 336, cf. 354–355), comprehends all activity by a labor organization "for the promotion of the interests of its members" including collective bargaining and the presentation of grievances. Sec-

[21] The Attorney General took the position that while the statute imposed no prior restraint upon the *formation* of any labor organization, once such an organization has been formed "it, as an organization, may not function or do business within the State of Alabama without first filing with the Department a copy of any constitution and by-laws which might be adopted by it" (Brief on Behalf of Appellees in the Supreme Court of Alabama, pp. 23–24).

tion 7 further provides that a labor organization "functioning" within Alabama must file annual reports giving specified information. We assume, therefore, that if a labor organization which had not complied with the conditions set forth in Section 7 engaged in collective bargaining in the State of Alabama it would be deemed thereby to have violated the Act. Section 18 of the statute provides fines and imprisonment for any such violation.

The application made of the Florida Act indicates that it likewise is construed as prohibiting labor organizations from "operating" and "functioning" in that state unless they have complied with the reporting requirements set forth in Section 6, and that labor organizations which have not complied with these provisions become liable to the penalties of fine, and, in the case of union officials, imprisonment, set forth in Section 14 of the Act if they engage in collective bargaining. In the *Hill* case, No. 811, the Supreme Court of Florida upheld an injunction which prohibited the petitioning union "from functioning and operating as a labor organization" (R. 19, 26–35) until it complied with the requirements of Section 6. And, it is our understanding that the courts of Alabama would also enjoin labor organizations which have not complied with the conditions set forth in Section 7

of the Alabama Act from "functioning."[22] Moreover, on the assumption that under these statutes non-complying labor organizations cannot lawfully engage in collective bargaining, it would appear that collective agreements consummated by such organizations would be deemed "void" and unenforceable in the state courts.[23]

We do not challenge the substantive filing and reporting requirements, as construed by the state authorities, of Section 7 of the Alabama and Section 6 of the Florida statutes. Nor, in view of the decision of the Court in *Thomas* v. *Collins*, No. 14, this Term, decided January 8, 1945,[24] do we question the authority of the states to enforce

[22] See *State* v. *Bynum*, 243 Ala. 138, 9 So. (2d) 134; *Try-Me Bottling Co.* v. *State*, 235 Ala. 207, 178 So. 231; *State* v. *Ellis*, 201 Ala. 295, 78 So. 71. See also, *United States* v. *American Bond & Mortgage Co.*, 31 F. (2d) 448 (N. D. Ill.), aff'd, 52 F. (2d) 318 (C. C. A. 7).

[23] Both the Supreme Court of Alabama and the Supreme Court of Florida analogized the imposition of conditions upon the functioning of labor organizations in Sections 7 and 6, respectively, to the licensing of real estate brokers (No. 588, R. 337; No. 811, R. 29). Contracts made by unlicensed brokers are uniformly held "void" and unenforceable by the state courts. *Knight* v. *Watson*, 221 Ala. 69, 70, 127 So. 841; *Marx* v. *Lining*, 231 Ala. 445, 448–449, 165 So. 207; cf. *Whitehead* v. *Coker*, 16 Ala. App. 165, 76 So. 484, 485–486; *Sunflower Lumber Co.* v. *Turner Supply Co.*, 158 Ala. 191, 48 So. 510. Cf. *Hooper* v. *California*, 155 U. S. 648.

[24] The opinion stated that a majority of the Court was not persuaded that the Texas statute there involved or its application was inconsistent with the National Labor Relations Act (slipsheet, pp. 19–20).

such requirements by making unlawful union activity of various kinds—i. e., signing up members by paid organizers, collecting dues, etc.—absent compliance with such substantive filing and reporting requirements. On the other hand, in so far as employees engaged in industries affecting interstate commerce and thus within the coverage of the National Labor Relations Act are concerned, state interference with the actual collective bargaining process stands, we believe, on a different basis. And this would seem to be true whether such interference takes the form of a prohibition of collective bargaining until stipulated conditions precedent are satisfied, rendering such bargaining illegal, or voiding contracts resulting from such bargaining. This problem, of course, was not presented to or decided by the Court in the *Thomas* case. That case merely stands for the proposition that a state statute which required paid labor union organizers to obtain registration cards before soliciting employees to join a union was not in conflict with the National Labor Relations Act, and that, so far as the National Act is concerned, solicitation without compliance with the registration requirement could be enjoined. The Texas statute there involved did not undertake to regulate the collective bargaining process or to enjoin the exercise of collective bargaining rights. Its impact upon the

operation of the federal statute was therefore far less direct than that of the Alabama and Florida statutes in issue here. Only if the Texas statute had provided, as it did not, that authorization or membership cards procured by an unregistered organizer were "void" and could not be considered by the National Labor Relations Board in determining whether a labor organization had been selected by the employees as their exclusive bargaining representative would it have posed a problem analagous to the instant cases.

Section 1 of the National Labor Relations Act declares it to be the policy of the United States to encourage "the practice and procedure of collective bargaining." Section 8 (5), which imposes upon employers the only affirmative duty provided by the Act, requires an employer "to bargain collectively with the representatives of his employees". Section 9 (a) provides that representatives selected by the majority of the employees within an appropriate unit shall be the exclusive representatives of all the employees within such unit; Section 9 (b) and (c) equip the national Board with adequate authority to determine, where necessary, the appropriate unit and the exclusive representatives, if any. By Section 10 (a), the Board's power to prevent any person from engaging in any unfair labor practice is declared to be "exclusive" and not to be affected by any other means of "adjustment or prevention"

established by "law" or otherwise. It is true that the national Act does not preclude the states from enacting various types of measures regulating union and employee conduct in labor disputes. *Allen-Bradley Local* v. *Wisconsin Board,* 315 U. S. 740, 748–749. But the Act on its face makes the employer's obligation to bargain with the majority-chosen representative unconditional; nor does anything in the Act limit the Board's authority in determining and certifying bargaining representatives to those approved by state authority. Likewise, nothing in the legislative history points in this direction. Thus, Section 8 (5), like other sections of the national Act, provides another illustration of the refusal of Congress to make "the application of the federal act dependent on state law" (*Jerome* v. *United States,* 318 U. S. 101, 104; *National Labor Relations Board* v. *Hearst Publications,* 322 U. S. 111, 123).

Strongly buttressing the conclusion that collective bargaining in industries affecting interstate commerce is not to be exposed to the varying requirements of state legislation is the additional consideration that the national Act does not merely create private rights (*Amalgamated Utility Workers* v. *Cons. Edison Co.,* 309 U. S. 261). Its basis, rather, is the national interest in maintaining unobstructed the channels of interstate commerce. *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.,* 301 U. S. 1. Thus, collective bar-

gaining must be regarded not as a private advantage but as a matter of national concern. It is a medium which Congress has deliberately chosen from among various alternatives. Under the appropriate circumstances prescribed by Section 8 (5) and 9 of the Act, an employer is required in the national interest to sit down at the conference table.

To the extent that in enforcement of their filing and reporting requirements state laws purport to suspend the right of representatives chosen by the majority of the employees within an appropriate unit to engage in collective bargaining, their immediate and direct interference with the national Act seems manifest. It is idle to suggest that the Alabama and Florida statutes prevent the union from requesting bargaining but not the employer from bargaining. Obviously, collective bargaining requires the participation of both parties, and the disqualification of one frustrates the process to the same degree as the disqualification of both. See p. 27, *supra*. Moreover, on principle it would seem that if the state can under given circumstances prevent a union from requesting bargaining, or subject it to criminal penalties if it does so, the state can at the same time impose similar disqualifications upon the employer who would become a party to the forbidden conduct. The drawing of a line short of this seems wholly illogical. *Per contra*, if the national Act requires

the employer to bargain without regard to state limitations, it would seem by the same force to preclude the state from restricting the other party to the bargaining process. Finally, it can hardly be questioned that a state policy of declaring void and refusing to enforce in its courts a collective bargaining contract which resulted from dealings between an employer and a union in default under a filing and reporting statute would directly affect both parties to the negotiations. Yet it is collective bargaining agreements which Congress has conceived to be the "effective instrument" (*H. J. Heinz Co.* v. *National Labor Relations Board*, 311 U. S. 514, 524) for stabilizing labor relations and safeguarding interstate commerce from interruption.

As we have just seen, if the states may enjoin or render criminal a union's participation in collective bargaining, or if they may void collective agreements, it follows that in the same circumstances the employer must be relieved of any duty under the national Act to enter into bargaining. Apart from other objections, the result would be to encumber the National Board with the duty in each case of determining whether in fact the union concerned was in default under the state law.[25]

[25] The National Labor Relations Board has already been required to deal with an employer's asserted defense that he was not required to deal with an individual not registered under Section 4 of the Florida Act. *Matter of Eppinger & Russell Co.*, 56 N. L. R. B. 1259, discussed, *supra*, p. 26.

In test cases such as these, where concededly there has been failure of compliance with the state requirements, the resolution of the question would be simple. But if the laws are sustained, it must be anticipated that in the future the question whether a union has complied may easily involve complicated issues of law and fact. Such questions, indeed, might even require the suspension of Board proceedings until the state courts had decided points in issue.[26] Clearly, any such scheme of interlacing federal-state administration is wholly at war with the expeditious determination contemplated by the national Act of controversies threatening interstate commerce.

Such frustration of the national policy need not occur if the states in framing their regulatory measures scrupulously refrain from resort to any sanction which so directly impinges upon the administration of the National Labor Relations Act.[27] True, the fining or jailing of an individual

[26] *Chicago* v. *Fieldcrest Dairies*, 316 U. S. 168; *Railroad Comm'n.* v. *Pullman Co.*, 312 U. S. 496, 499–500; *Thompson* v. *Magnolia Co.*, 309 U. S. 478, 483–484.

[27] Comparison of the sanctions utilized to enforce the state regulations with those adopted by the federal Government to ensure filing of financial reports by labor organizations pursuant to the provisions of the Revenue Act of 1943, Title 1, § 117 (a), 58 Stat. 36, 26 U. S. C. A. § 54 (f) highlights the features of the state law to which objection is here made. Unlike the state laws, the federal Act does not make it unlawful for labor organizations which fail to file the required returns to function; such organizations are free to continue

who failed to file a report or other data, or the fining of a union under similar circumstances, might indirectly bear upon collective bargaining, somewhat as the lawful imprisonment of a wrongfully discharged employee may have the effect in a particular case of rendering physically impossible his reinstatement pursuant to a Board order. But both in principle and in practical administration, there is a substantial difference between the latter type of sanction and the effort of a state directly to lay hold of the collective bargaining process.

The distinction which we urge finds support in analogous cases in this Court. For example, it is probably fair to say that in *Allen-Bradley Local* v. *Wisconsin Board,* 315 U. S. 740, decision turned upon the fact that the State Board had not purported to interfere with the status of the fourteen individuals there involved as "employees" (p. 748). As we have shown (*supra,* pp. 30–31), the opinion pointed out (p. 750) that there was nothing in that case which "impairs, dilutes, qualifies or in any respect subtracts from any of the rights guaranteed and protected by the federal [National Labor Relations] Act." The Court further observed (p. 751) that "If the order of the state

to engage in collective bargaining. The statute simply provides for a penalty to be imposed upon the persons who fail to file. Internal Revenue Code, 53 Stat. 28, 26 U. S. C. § 54 (a), (b), and 53 Stat. 62, 26 U. S. C. § 145.

Board affected the status of the employees, *or if it caused a forfeiture of collective bargaining rights,* a distinctly different question would arise" (italics ours). In the *Allen-Bradley* case, as in the instant cases, the substantive regulation was valid. There the sanction utilized for enforcement could be sustained because, unlike the situation here, it did not impinge upon the National Labor Relations Act. The recent case of *Pollock* v. *Williams*, 322 U. S. 4, dealing with the Federal Antipeonage Act, is also suggestive. The Court there recognized that states remain free under that federal act to punish fraud involving labor contracts, but insisted that in shaping such legislation they must take care, consistent with the national policy, not to make failure to labor in discharge of a debt any part of a crime (p. 24). So, likewise, we agree that a state may subject a union bargaining collectively within its boundaries to various filing and reporting requirements and may punish for failure to file or report; but we submit that, consistent with the national policy, a state may not enjoin or render illegal collective bargaining itself, or void contracts resulting from such bargaining. Similarly, in the field of state regulation under the Commerce Clause, it is familiar law that while the states may exclude foreign corporations from doing business within their borders, and may, of course, regulate such intrastate business of foreign corporations as they

permit, they may not condition their grant of the right to transact such business upon the waiver of federal rights; nor may they utilize their power to exclude such corporations as a sanction to enforce regulations beyond their constitutional power to enact.[28]

We submit, therefore, that to the extent that their enforcement is secured by means of enjoining or rendering illegal collective bargaining, or voiding contracts resulting from collective bargaining, Section 7 of the Alabama Act and Section

[28] *Terral* v. *Burke Construction Co.*, 257 U. S. 529; *Barron* v. *Burnside*, 121 U. S. 186; *Western Union Tel. Co.* v. *Foster*, 247 U. S. 105 (state may not condition the grant of a privilege to use its streets upon the right to regulate the user's interstate business); *Conn. General Life Ins. Co.* v. *Johnson*, 303 U. S. 77; *Baltic Mining Co.* v. *Mass.*, 231 U. S. 68, 83; *Sioux Remedy Co.* v. *Cope*, 235 U. S. 197; *Dahnke-Walker Milling Co.* v. *Bondurant*, 257 U. S. 282; *Cooney* v. *Mountain States Tel. & Tel. Co.*, 294 U. S. 384. See Merrill, *Unconstitutional Conditions*, 77 U. of Pa. L. Rev. 879. So too, while the state may tax the income of federal employees (*Graves* v. *O'Keefe*, 306 U. S. 466), they cannot require such employees to obtain a state license before performing their federal functions (*Johnson* v. *Maryland*, 254 U. S. 51). And it would seem that the states could not seek to enforce payment of such taxes by prohibiting delinquents from retaining federal employment. In point also, is the relation of the states to federal patentees. Although the states may tax income derived from patents (*Fox Film Corp.* v. *Doyal*, 286 U. S. 123) *quaere* whether the states could constitutionally provide by way of sanction to insure payment that unless and until the patentee paid the tax he could not lawfully receive royalties from his licensees, or manufacture the patented article, or license others to do so.

6 of the Florida Act are inconsistent with the National Labor Relations Act.

Respectfully submitted.

CHARLES FAHY,
Solicitor General,
ROBERT L. STERN,
Special Assistant to the Attorney General.
ALVIN J. ROCKWELL,
General Counsel,
IVAR PETERSON,
Assistant General Counsel,
RUTH WEYAND,
ELIZABETH W. WESTON,
MOZART G. RATNER,
Attorneys,
National Labor Relations Board.

MARCH 1945.

APPENDIX A

The pertinent provisions of Senate Bill 341, Acts of Alabama, 1943, No. 298 (Code 1943, Tit. 26 §§ 376 *et seq.*), are as follows:

SECTION 1. DECLARATION OF POLICY. The right to live involves the right to work. The public and working men and women must be protected. The activities of labor organizations affect the social and economic conditions of the State and the welfare of its citizens. It is declared to be the policy of this State, in the exercise of its police power and in the protection of the public interest, to promote voluntary and peaceful settlement and adjustment of labor disputes and to regulate the activities and affairs of labor organizations, their officers, agents, and other representatives in the manner and to the extent hereinafter provided.

SECTION 2. When used in this Act, the terms defined shall have the meaning here ascribed to them unless it clearly appears from the context that some other meaning is indicated: (a) "Labor Organization" or "Labor Union" shall mean every organization, association, group, union, lodge, local, branch, or subdivision thereof, whether incorporated or not, having within its membership employees working in the State of Alabama, organized for the purpose of dealing with employer or employers concerning hours of employment, rates of pay, or the tenure or other terms or conditions of employment, but such term or terms shall not include any labor organization or labor

union the members of which are subject to the Act of Congress known as the Railway Labor Act. (b) "Labor Dispute" shall include any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee, provided that this definition shall not relate to a dispute between an individual worker and his employer. (c) "Outlaw" or "Wildcat" strike shall mean any strike not authorized by vote as provided in Section 13 of this Act.

* * * * * *

SECTION 7. Every labor organization functioning in Alabama shall within sixty days after the effective date of this Act, and every labor organization hereafter desiring to function in Alabama shall, before doing so, file a copy of its constitution and its by-laws and a copy of the constitution and by-laws of the national or international union, if any, to which the labor organization belongs, with the Department of Labor, but this provision shall not be construed to require the filing of any ritual relating solely to the initiation or reception of members. All changes or amendments to the constitution or by-laws, local, national or international, adopted subsequent to their original filing must be filed with the Department of Labor within thirty days after the adoption thereof.

Every labor organization functioning in the State of Alabama and having twenty-five or more members in any calendar year

shall annually on or before February first in the next succeeding calendar year file with every member of their respective labor organizations and with the Director of the Department of Labor a report in writing showing the facts hereinafter in this section provided as of the close of business on the thirty-first day of December next preceding the date of filing. Such report shall be filed by the secretary or business agent of such labor organization and shall show the following facts: (1) The name of the labor organization; (2) the location of its principal office and its offices in Alabama; (3) the name of the president, secretary, treasurer and other officers, and business agents, together with the salaries, wages, bonuses, and other remuneration paid each, and post office address of each; (4) the date of regular election of officers of such labor organization; (5) the number of its paid up members; (6) a complete financial statement of all fees, dues, fines, or assessments levied and/or received, together with an itemized list of all disbursements, with names of recipients and purpose therefor, covering the preceding twelve (12) months; (7) a complete statement of all property owned by the labor organization, including any monies on hand or accredited to such labor organization, which said report shall be duly verified by the oath of the president, secretary, or some other regularly selected and acting officer of such labor organization having knowledge of the facts therein stated. It shall be the duty of the Director of Labor to cause to be printed and to make available to the public forms for making such report. At the time of filing each such report it shall be the duty of every such

labor organization to pay the Director of Labor an annual fee therefor in the sum of two dollars.

The Director of Labor shall receive, file and index the reports provided for in this section of this Act. The records provided for herein shall be made available by the Director of Labor in his office to the Governor of Alabama for examination.

It shall be unlawful for any fiscal or other officer or agent of any labor organization to collect or accept payment of any dues, fees, assessments, fines, or any other monies from any member while such labor organization is in default with respect to filing the annual report required in this section.

* * * * *

SECTION 16. It shall be unlawful for any executive, administrative, professional, or supervisory employee to be a member in, or to be accepted for membership by, any labor organization, the constitution and by-laws of which permit membership to employees other than those in executive, administrative, professional, or supervisory capacities, or which is affiliated with any labor organization which permits membership to employees other than those in an executive, administrative, professional, or supervisory capacity. The provisions of this Section shall not be construed so as to interfere with or void any insurance contract now in existence and in force.

* * * * *

SECTION 18. PENALTIES: If any labor organization violates any provision of this Act, it shall be penalized civilly in a sum not exceeding one thousand dollars ($1,000.00) for each such violation to be recovered as a penalty in the Circuit Court

of the County in which the violation occurred, the action being brought in the name of the State of Alabama by the Circuit Solicitor of the Circuit in which the violation occurred, and it shall be the duty of the Circuit Solicitor of any Circuit in which any such violation occurs to institute and prosecute such action. The doing of any act forbidden or declared unlawful by the provisions of this Act, except where a penalty is specifically provided herein, or the commission of any offense herein declared to be a misdemeanor, shall constitute a misdemeanor, and shall be punishable by a fine not exceeding five hundred dollars ($500.00), or by imprisonment at hard labor for not exceeding twelve months, or both.

APPENDIX B

The pertinent provisions of House Bill No. 142, Laws of Florida, 1943, Chapter 21968, page 565 are as follows:

SECTION 1. Because of the activities of labor unions affecting the economic conditions of the country and the State, entering as they do into practically every business and industrial enterprise, it is the sense of the Legislature that such organizations affect the public interest and are charged with a public use. The working man, unionist or non-unionist, must be protected. The right to work is the right to live.

It is here now declared to be the policy of the State, in the exercise of its sovereign constitutional police power, to regulate the activities and affairs of labor unions, their officers, agents, organizers, and other representatives, in the manner, and to the extent hereafter set forth.

SECTION 2. The following terms, when used in this Act, shall have the meaning ascribed to them in this section:

(1) The term "labor organization" shall mean any organization of employees, local or subdivision thereof having within its membership residents of the State of Florida, whether incorporated or not, organized for the purpose of dealing with employers concerning hours of employment, rate of pay, working conditions or grievances of any kind relating to employment.

(2) The term "business agent" as used herein shall mean any person, without re-

gard to title, who shall for a pecuniary or financial consideration, act or attempt to act for any "labor organization" in (a) the issuance of membership, or authorization cards, work permits, or any other evidence of rights granted or claimed in, or by, a labor organization, or (b) in soliciting or receiving from any employer any right or privilege for employees.

* * * * *

SECTION 4. No person shall be granted a license or a permit to act as a business agent in the State of Florida, (1) who has not been a citizen of and has not resided in the United States of America for a period of more than ten years next prior to making application for such license or permit. (2) Who has been convicted of a felony. (3) Who is not a person of good moral character, and every person desiring to act as a business agent in the State of Florida shall before doing so obtain a license or permit by filing an application under oath therefor with the Secretary of State, accompanied by a fee of One Dollar. There shall accompany the application a statement signed by the president and secretary of the labor organization for which he proposes to act as agent, showing his authority to do so. The Secretary of State shall hold such application on file for a period of thirty days during which time any person may file objections to the issuing of such license or permit. After the expiration of the thirty day period, regardless of whether or not any objections have been filed, the Secretary of State shall submit the application, together with all information that he may have including any objections that may have been filed to such

application to a Board to be composed of the Governor as Chairman, the Secretary of State, and the Superintendent of Education. If a majority of the Board shall find that the applicant is qualified, pursuant to the terms of this Act *and are of the opinion that the public interest requires that a license or permit should be issued to such applicant,* then the Board shall by resolution authorize the Secretary of State to issue such license or permit, same shall be for the calendar year and shall expire on December 31 of the year for which issued unless sooner surrendered, suspended, or revoked. [Italicized phrase held invalid by state court.]

* * * * *

SECTION 6. Every labor organization operating in the State of Florida shall make a report in writing to the Secretary of State annually on or before July first. Such report shall be filed by the secretary or business agent of such labor organization and shall be in such form as the Secretary of State may prescribe, and shall show the following facts:

(1) The name of the labor organization;

(2) The location of its office;

(3) The name and address of the president, secretary, treasurer, and business agent.

At the time of filing such report it shall be the duty of every such labor organization to pay the Secretary of State an annual fee therefor in the sum of One Dollar.

* * * * *

SECTION 9. It shall be unlawful for any person:

* * * * *

(6) To act as a business agent without having obtained and possessing a valid and subsisting license or permit.

* * * * *

SECTION 10. An action may be commenced by the Attorney General of the State on complaint of any interested party, for the suspension or revocation of the license of any business agent for the violation of any of the provisions of this Act. Said action shall be commenced only in the circuit court of the county of residence of such business agent or of the county in which such violations occurred. Such action shall be heard by the court without a jury and the rules of equity procedure shall apply in such proceedings. The court may suspend such license for such time as in its judgment is deemed best, or may revoke such license.

* * * * *

SECTION 14. Any person or labor organization who shall violate any of the provisions of this Act, shall, upon conviction thereof, be adjudged guilty of a misdemeanor and be punished by a fine not exceeding Five Hundred Dollars ($500.00) or by imprisonment in the county jail for not to exceed six months, or by both such fine and imprisonment.

SECTION 15. All railway labor organizations and members thereof shall be exempt from all of the provisions of this Act as long as they are regulated by any Act or Acts of the Congress of the United States.

APPENDIX C

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, 29 U. S. C. 151 *et seq.*) are as follows:

FINDINGS AND POLICY

SECTION 1. The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and

by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right to employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

SEC. 2. When used in this Act—

* * * * *

(2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an

employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

(4) The term "representatives" includes any individual or labor organization.

(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

* * * * *

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it * * *.

* * * * *

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization * * *.

* * * * *

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a).

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the

purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided,* That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

(b) The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives.

* * * * * *

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

U. S. GOVERNMENT PRINTING OFFICE: 1949

SUPREME COURT OF THE UNITED STATES.

No. 588.—October Term, 1944.

Alabama State Federation of Labor, Local Union No. 103, United Brotherhood of Carpenters and Joiners of America, et al., Petitioners,
vs.
Robert E. McAdory, as Solicitor of Jefferson County, Alabama, et al.

On Writ of Certiorari to the Supreme Court of Alabama.

[June 11, 1945.]

Mr. Chief Justice Stone delivered the opinion of the Court.

This case was brought in the state courts of Alabama for a declaratory judgment adjudicating the constitutional validity of certain sections of the Bradford Act, No. 298, Alabama Laws of 1943 (Code 1943, Tit. 26 §§ 376 *et seq.*). The principal question is whether petitioners' contentions are so related to any case or controversy presented by the record that this Court may appropriately pass upon them in a declaratory judgment proceeding.

Petitioners are four affiliated, unincorporated labor organizations, the American Federation of Labor, and the United Brotherhood of Carpenters and Joiners of America, which are national labor organizations, and two Alabama labor organizations, and an individual who is a citizen of Alabama and a member of petitioner, Local Union No. 103, United Brotherhood of Carpenters and Joiners of America.

Petitioners brought the present suit in the Alabama Circuit Court for Jefferson County against respondents, officers of Jefferson County, charged with the duty of enforcing the Bradford Act. They prayed a declaratory judgment that the Act as a whole and specifically §§ 7, 15, and 16, among others, are unconstitutional and void under the federal and state constitutions.

After a trial upon a stipulated statement of facts, certain affidavits and the testimony of witnesses, the circuit court held the Act as a whole, and specifically § 7 of the Act, to be valid and constitutional. It declined as "inappropriate" to make declara-

tions as to the validity of §§ 15 and 16. On appeal, petitioners assigning as error the circuit court's failure to pass upon the constitutionality of §§ 15 and 16, and to declare those sections and § 7 unconstitutional, the state supreme court held all three sections valid and constitutional. — Ala. —. We granted certiorari, — U. S. —, upon a petition which presented the contentions[1] that §§ 7 and 16 impose a prior general restraint on petitioners' freedom of speech and assembly guaranteed by the First and Fourteenth Amendments to the Constitution and conflict with the National Labor Relations Act by depriving them of rights under it; that §§ 7, 15 and 16 are an arbitrary and unreasonable exercise of the state police power which denies petitioners due process and equal protection of the laws in violation of the Fourteenth Amendment; and that §§ 15 and 16 are so ambiguous and uncertain in their requirements as to deny petitioners due process of law.

The Bradford Act is a comprehensive enactment regulating labor unions having members who are employees working in the State of Alabama. It establishes a Department of Labor under the supervision and control of a director of labor; it sets up mediation machinery for the settlement of labor disputes. It requires all labor organizations within the provisions of the Act to file with the Department various reports and financial statements and to pay filing fees. It regulates some phases of the internal affairs and activities of labor organizations, and various aspects of picketing, boycotting and striking. It imposes civil liability and criminal penalties for violation of its provisions.

Section 7 provides that "Every labor organization functioning in Alabama shall within sixty days after the effective date of this chapter, and every labor organization hereafter desiring to function in Alabama shall, before doing so, file a copy of its constitution and its by-laws and a copy of the constitution and by-laws of the national or international union, if any, to which the labor organization belongs, with the department of labor. . . . All changes or amendments to the constitution or by-laws, local, national or international, adopted subsequent to their original filing must be filed with the department of labor within thirty days after" their adoption.

[1] Under the view we take of the case it is unnecessary to determine whether petitioners have properly raised in the state courts the federal questions which they urge here with respect to §§ 15 and 16.

Section 7 further provides that "Every labor organization functioning in the State of Alabama and having twenty-five or more members," shall file annually with every member of the organization and with the Director of the Department of Labor a verified written report giving detailed information as to its name, the location of its offices, the officers of the organization, their salaries, wages, bonuses, and other remuneration, the date of the election of officers, the number of its paid up members, and a complete financial statement showing all receipts and disbursements with the names of recipients and purpose thereof, and a complete statement of the money and property owned by the organization. Section 7 also declares, "It shall be unlawful for any fiscal or other officer or agent of any labor organization to collect or accept payment of any dues, fees, assessments, fines, or any other monies from any member while such labor organization is in default with respect to filing the annual report. . . ."

Section 15 reads: "It shall be unlawful for any labor organization, any labor organizer, any officer, agent, representative or member of any labor organization, or any other person, to collect, receive or demand, . . . from any person, any fee, assessment, or sum of money whatsoever, as a work permit or as a condition for the privilege of work; provided, however, this shall not prevent the collection of initiation fees or dues."

Section 16 prescribes: "It shall be unlawful for any executive, administrative, professional, or supervisory employee to be a member in, or to be accepted for membership by, any labor organization, the constitution and by-laws of which permit membership to employees other than those in executive, administrative, professional or supervisory capacities, or which is affiliated with any labor organization which permits membership to employees other than those in an executive, administrative, professional or supervisory capacity. The provisions of this Section shall not be construed so as to interfere with or void any insurance contract now in existence and in force." Section 18 enacts, "If any labor organization violates any provision of this chapter, it shall be penalized civilly in a sum not exceeding one thousand dollars ($1,000.00) for each such violation. . . . The doing of any Act forbidden or declared unlawful by the provisions of this chapter . . . shall constitute a misdemeanor, and shall be punishable by a fine . . . or by imprisonment."

Infringement of freedom of speech and assembly by sections 7 and 16.

Petitioners do not deny the authority of the state to regulate labor unions. They do not contend that all their practices shown by the record or all their activities required to be reported by § 7 are within the protection of the constitutional provisions preserving the right to free speech or assembly, or that the requirement of § 7 that petitioners file reports, of itself, infringes their right of free speech. But construing the words of § 7 which provide that labor organizations "functioning" in the state shall file the prescribed statements or reports, and the further requirement that every labor organization "desiring to function" in Alabama shall, before doing so, file certain prescribed documents, petitioners attack the section as a licensing provision and assail its validity on the ground that as such it is a restraint upon their freedom of speech and assembly.

No officer or representative of the state is empowered by the terms of the section to grant or withhold a license authorizing a labor organization to function within the state. The State Supreme Court so held in this case. The argument is that compliance with § 7 is made prerequisite to the functioning of any labor organization within the state, and that one of the functions of petitioners is the exercise of their right of freedom of speech and assembly to advance the interests of labor and labor organizations by winning public support for their program, through education and dissemination of information. They say that the requirement of a license, before a labor organization can function within the state, to be secured by filing the requisite statements and reports, is an unconstitutional restraint on their right of free speech and assembly. Specifically they argue that if they fail to file any of the statements required by § 7 and afterwards function as a labor union within the state, by exercising their right of free speech and assembly, they may be subjected to the criminal penalties imposed by § 18, and may also be enjoined from so functioning by a civil suit in equity in the state courts.

In considering this objection to § 7 the Supreme Court of Alabama did not elaborate on the meaning of the terms "function" or "functioning" as used in the statute. It indicated that they embrace the conduct of the business activities of labor organi-

nations within the state, such as the assessment and collection of fines and dues, the collection of monies and their disbursement, the management of their property, the election of their officers and the appointment of their agents, and the maintenance and defense of suits in the courts. And it added "'Function' as used in this Act, simply means a labor organization, whether incorporated or not, engaged in business in this State, and in the character of business thus indicated, for the promotion of the interests of its members. True, as a part of its functioning, and a part only, the assemblage of its members for discussion is had, but this is merely incidental."

This language may be taken to suggest that assemblies of labor organizations which are incidental to their business activities are within the reach of the Act. But we are left uninformed, and, without the application of the statute by the state courts to some concrete set of facts, we are unable to say, whether the statute is to be construed as meaning that "functioning" by a labor organization which has not complied with § 7 by filing the prescribed reports is itself a violation of the Act subjecting it to cumulative penalties under § 18.

On the face of the statute failure to file the required statements or reports entails a civil and possibly also a criminal penalty. The collection of dues after such a failure is by § 7 declared to be unlawful and is therefore by § 18 made a misdemeanor. But the statute nowhere in terms makes it an offense or unlawful for a labor organization to continue otherwise to function after failing to file the required report or statement. So far as appears the Supreme Court of Alabama has not construed the penal provisions of the statute or determined that the failure of a labor organization to file the documents specified in § 7 entails any consequences other than the specified penalty for the failure to file, with a further penalty if without filing the labor organization or its officers continue to collect dues. Neither of these sanctions is asserted or shown to operate as an injunction restraining freedom of speech or assembly. Nor does it appear that the Alabama courts have held that a labor organization failing to file may be enjoined from functioning.

Moreover if "functioning" after failure to file is itself a violation we do not know whether the statute will be interpreted as penalizing a union merely for engaging in those business activi-

ties which are not contended to be within the protection of the right to free speech or, on the other hand, for holding meetings which are wholly unrelated to its business activities. In any event we are not advised, nor has the state court said, what assemblies or meetings of a labor organization are so related to its business activities as to be deemed "incidental" to them so as to be within the reach of the statute.

Obviously no decision of the constitutional issues now posed could be made in this suit, and no opinion could be written, without considering all and deciding some at least of these questions of statutory interpretation. No state court has decided them, briefs and argument offer us little aid in their solution, and no solution which we could tender would be controlling on the state courts. The record supplies us with no concrete state of facts to which the challenged sections, when construed, could be applied. For all that we know the only penalty to which petitioners may be subjected for violation of § 7 is a single penalty for failure to file the required statement or report, and their continued functioning in the state would subject them to no further penalty or restraint. And assuming that the penalties or threat of penalties of the statute may be so applied as to operate as a present restraint more than does the bare existence of the civil and criminal penalties for libel, it nowhere appears that the statutory penalties are being so threatened or applied.

It is not contended that the statute in any way restricts the freedom of assembly and speech of labor organizations after they comply with the filing requirements of the statute, and it nowhere appears that any of the petitioners are so situated that they could not comply with the statute within the period allowed by it for compliance, without incurring any penalty for noncompliance. The attack thus made on § 7 is as to the constitutionality of the section on its face, without reference to its application to any particular defined set of facts, other than those generally catalogued in the section itself. We cannot say that §§ 7 and 18 could not be so construed and applied as not to restrain petitioners' functioning in the state in the exercise of their constitutional right of free speech and assembly. We are thus invited to pass upon the constitutional validity of a state statute which has not yet been applied or threatened to be applied by the state courts to

petitioners or others in the manner anticipated. Lacking any authoritative construction of the statute by the state courts, without which no constitutional question arises, and lacking the authority to give such a controlling construction ourselves, and with a record which presents no concrete set of facts to which the statute is to be applied, the case is plainly not one to be disposed of by the declaratory judgment procedure.

The requirements for a justiciable case or controversy are no less strict in a declaratory judgment proceeding than in any other type of suit. *Nashville, C. & St. L. Ry.* v. *Wallace*, 288 U. S. 249; *Aetna Life Ins. Co.* v. *Haworth*, 300 U. S. 227; *Maryland Casualty Co.* v. *Pacific Co.*, 312 U. S. 270, 273; *Great Lakes Co.* v. *Huffman*, 319 U. S. 293, 299, 300; *Coffman* v. *Breeze Corps.*, 323 U. S. 316. This Court is without power to give advisory opinions. *Hayburn's Case*, 2 Dall. 409; *United States* v. *Evans*, 213 U. S. 297, 301; *Muskrat* v. *United States*, 219 U. S. 346; *Stearns* v. *Wood*, 236 U. S. 75; *Coffman* v. *Breeze Corps.*, *supra*. It has long been its considered practice not to decide abstract, hypothetical or contingent questions, *Giles* v. *Harris*, 189 U. S. 475, 486; *District of Columbia* v. *Brooke*, 214 U. S. 138, 152; *Anniston Mfg. Co.* v. *Davis*, 301 U. S. 337, 355; *Electric Bond Co.* v. *Commission*, 303 U. S. 419; *United States* v. *Appalachian Power Co.*, 311 U. S. 377, 423, or to decide any constitutional question in advance of the necessity for its decision, *Charles River Bridge* v. *Warren Bridge*, 11 Pet. 420, 553; *Trade Mark Cases*, 100 U. S. 82, 96; *Liverpool, N. Y. & P. S. S. Co.* v. *Immigration Commrs.*, 113 U. S. 33, 39; *Burton* v. *United States*, 196 U. S. 283, 295; *Arkansas Oil Co.* v. *Louisiana*, 304 U. S. 197, 202, or to formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied, *Liverpool, N. Y. & P. S. S. Co.* v. *Immigration Commrs.*, *supra*, 39; *White* v. *Johnson*, 282 U. S. 367, 371; *Allen-Bradley Local* v. *Board*, 315 U. S. 740, 746-7, or to decide any constitutional question except with reference to the particular facts to which it is to be applied, *Hall* v. *Geiger-Jones Co.*, 242 U. S. 539, 554; *Corp. Comm.* v. *Lowe*, 281 U. S. 431, 438; *Continental Baking Co.* v. *Woodring*, 286 U. S. 352, 372; *Atlantic & Pacific Tea Co.* v. *Grosjean*, 301 U. S. 412, 429-30.

A law which is constitutional as applied in one manner may, it is true, violate the Constitution when applied in another. *Field* v.

Clark, 143 U. S. 649, 694-7; *Dahnke-Walker Co.* v. *Bondurant*, 257 U. S. 282, 289; *Concordia Ins. Co.* v. *Illinois*, 292 U. S. 535; *Associated Press* v. *Labor Board*, 301 U. S. 103. But "Since all contingencies of attempted enforcement cannot be envisoned in advance of those applications" this Court has felt bound to delay passing on "the constitutionality of all the separate phases of a comprehensive statute until faced with cases involving particular provisions as specifically applied to persons who claim to be injured." *Watson* v. *Buck*, 313 U. S. 387, 402. All these considerations forbid our deciding here the constitutionality of a state statute of doubtful construction in advance of its application and construction by the state courts and without reference to some precise set of facts to which it is to be applied. The declaratory judgment procedure may be resorted to only in the sound discretion of the Court and where the interests of justice will be advanced and an adequate and effective judgment may be rendered. *Great Lakes Co.* v. *Huffman*, *supra*; *Coffman* v. *Breeze Corps.*, *supra*.

Like objections are made and like questions raised with respect to § 16 which makes it unlawful for any "executive, administrative, professional, or supervisory employee to be a member in, or to be accepted for membership by, any labor organization" which admits to membership employees other than persons of these classes. The section does not define executive, administrative, professional or supervisory employees. No proceeding appears to have been brought in any state court for enforcement of the section, and we are without the aid of any authoritative construction of its provisions. The record discloses only general allegations in the words of the statute that petitioners admit to their membership both employees who are and employees who are not of those classes. The record gives no information as to the duties of such supervisory employees other than petitioner Jones. As to them the Court is thus asked to rule upon the constitutionality of a state statute which petitioners challenge as too vague and indefinite to satisfy constitutional requirements, which does not appear to have been applied or construed by the state court, upon a record which affords an inadequate factual basis for determining whether the statute is applicable to any of them, or if so whether as applied to them the statute would violate freedom of speech and assembly.

A further and conclusive ground for our declining to pass on the validity of § 16 is the ruling of the State Supreme Court that that section is inapplicable wherever it would otherwise "interfere with or void any insurance contract now in existence and in force." The record without disclosing the details shows that petitioners provide insurance benefits for their members as such, and that petitioner Jones is a member of petitioner United Brotherhood of Carpenters and Joiners of America, and as a member is entitled to such benefits. Whether and to what extent § 16 can be deemed applicable to the members of any of the other petitioners because of existing insurance arrangements does not appear. Only those to whom a statute applies and who are adversely affected by it can draw in question its constitutional validity in a declaratory judgment proceeding more than in any other. *Marye* v. *Parsons*, 114 U. S. 325; *Tyler* v. *The Judges*, 179 U. S. 405; *Turpin* v. *Lemon*, 187 U. S. 51, 60, 61; *Arizona* v. *California*, 283 U. S. 423, 463, 464; *First National Bank* v. *Tax Comm'n*, 289 U. S. 60, 65; *Ashwander* v. *Valley Authority*, 297 U. S. 288; *Anderson Nat. Bank* v. *Luckett*, 321 U. S. 233, 242.

Conflict of sections 7 and 16 with the National Labor Relations Act.

Petitioners also urge that § 7 and § 16 conflict with the National Labor Relations Act, 49 Stat. 449, 29 U. S. C. § 151 *et seq.*, in that Alabama is likely to assert the power to enforce those sections by depriving petitioners of their right to function in the state as collective bargaining representatives under the National Labor Relations Act. They point out that the National Act, § 8(5), unconditionally requires an employer to bargain with the representatives of his employees. They contend that § 7 thus conflicts with the National Act and that the enforcement of the former tends to hinder and interfere with the performance of petitioners' functions under the National Act.

Petitioners also urge that § 16 conflicts with the National Labor Relations Act in that under its provisions, as construed and administered by the National Labor Relations Board, employees in certain industries, who exercise supervisory functions, may join and be represented by unions which also admit to their membership non-supervisory employees. Petitioners say that any labor organization which has failed to file the report as required by § 7, or which admits to its union a supervisory employee contrary to

§ 16, will be precluded from acting as a bargaining agent under the National Labor Relations Act.

Assuming as we do for present purposes that these contentions are sound, it does not follow that there is no constitutional scope for application of §§ 7 and 16. The National Labor Relations Act does not extend to all industries and all employees. It is only applicable to those employments in which strikes and labor disputes would affect interstate commerce and are found to be such by the National Labor Relations Board. *Labor Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 38-40; *Labor Board* v. *Fainblatt*, 306 U. S. 601, 604; *Polish Alliance* v. *Labor Board*, 322 U. S. 643, 647.

The record contains evidence of only the most general character that there are industries located within the state whose employees are "within the jurisdiction of the Alabama State Federation of Labor and Local No. 103, or of the other A. F. of L. unions within the class for which the complaint has been filed, which are engaged . . . in interstate commerce." There is evidence generally as to the practice of the National Labor Relations Board in certifying unions as bargaining representatives. But it nowhere affirmatively appears that any of petitioners act as bargaining representatives of employees in industries within the state which are subject to the National Labor Relations Act.

What is more important for present purposes is that it does not appear that there are any of petitioners which do not represent employees in industries which are not subject to the National Labor Relations Act. To decide the question of the alleged conflict of §§ 7 and 16 with the National Labor Relations Act and the effect of it, it would be necessary to know whether petitioners or some of them represent employees in industries not subject to the National Labor Relations Act, and the extent to which for that reason they may be rightly subject to local regulation even though they also represent employees in other industries which are subject to the National Act. The record is silent as to which of petitioners represent the one, or the other, or both. Hence we have no state of facts before us which would enable us to determine the extent to which the several petitioners may be subject to local regulation which does

not conflict with the National Act, and thus we are unable to say to what extent the challenged sections are valid or invalid under the National Act.

When a statute is assailed as unconstitutional we are bound to assume the existence of any state of facts which would sustain the statute in whole or in part. *Metropolitan Insurance Co.* v. *Brownell,* 294 U. S. 580, 584 and cases cited; *United States* v. *Carolene Products Co.,* 304 U. S. 144, 152, 153. Since petitioners or some of them are not shown to function exclusively as bargaining representatives for employees in industries subject to the National Labor Relations Act, we cannot say that §§ 7 and 16 could in no circumstances be validly applied to them. The extent to which in fact the sections are or may be so applied, and in what circumstances, does not appear. In this state of the record we are not called upon to say whether or to what extent they may be constitutionally applied.

Moreover, for reasons already stated in our discussion of the alleged infringement of freedom of speech and assembly, we cannot assume that the failure to file reports will result in the exclusion of petitioners, or any of them, from functioning in the state, or visit any consequences upon them other than the penalty for failure to file. We therefore have no question before us of a statute which has been construed to operate either by its penal sanctions or by the aid of injunction to prevent petitioners, or any of them, from functioning within the state for non-compliance with § 7. Compare *Hill* v. *Florida;* No. 811, decided this day. Nor can we say in the absence of any showing to the contrary that the filing of information returns will impose such burdens on any of petitioners as to interfere with the performance of their functions under the National Labor Relations Act in cases where that Act is applicable.

And finally, as we have pointed out, a further ground for our not considering the validity of § 16 and whether it conflicts with the National Labor Relations Act is the ruling of the State Supreme Court that that section is inapplicable wherever it would otherwise interfere with or render ineffective any existing contract of insurance. In view of this holding, it is incumbent on petitioners to show, as they have failed to do, to what extent § 16 can be taken to be applicable to any of them because of existing insurance arrangements with union members.

We can be asked to condemn a state statute as in conflict with national legislation only if the conflict is clearly shown, *Allen-Bradley Local* v. *Board, supra,* 749; *Townsend* v. *Yeomans,* 301 U. S. 441, 454, and cases cited, and only by those who show that they are adversely affected by the alleged conflict with national power. Each of the contentions which petitioners make with respect to the conflict of §§ 7 and 16 with the National Labor Relations Act could readily be adjudicated and disposed of in an adversary suit drawing in question their validity as applied to specific states of fact, in which respondents could both challenge the facts and the applicability to them of the statute. In the present suit we find that both the uncertainty as to the construction of the sections and the uncertainty as to the facts to which they are to be applied preclude the adjudication which the petitioners seek.

The validity of § 15 under the due process clause.

Section 15 makes it "unlawful for any labor organization, any labor organizer, any officer, agent, representative or member of any labor organization, or any other person, to collect, receive or demand, . . . from any person, any fee, assessment, or sum of money whatsoever, as a work permit or as a condition for the privilege of work." But it excludes from the operation of the Act the collection of "initiation fees or dues." Petitioners assert that the section applying as it does to every form of collection of money, other than initiation fees or dues, "as a work permit or as a condition for the privilege of work," prevents numerous legitimate and desirable labor union practices and hence is so harsh, arbitrary and unreasonable in its application as to infringe due process. A number of examples are given, such as union fees charged to non-union apprentices in return for their "guidance and teaching" by union members, fees charged to non-union members for participation in the benefits of existing all-union collective bargaining contracts, fees charged for the transfer from one union to another pending admission to union membership in the latter, and the like.

Although it appears that the constitutions of petitioners, or some of them, contain a provision permitting them to charge a fee to union members working in a union "jurisdiction" outside that in which they live, it nowhere appears that such fees or any

of the others specified by petitioners are being or will be charged, or that respondents or the courts have determined that they are unlawful as not being initiation fees or dues, or that any form of legal proceeding based on such a contention is contemplated. For these reasons the Supreme Court of Alabama declined to consider whether § 15 was applicable to petitioners, saying, "Whether or not certain practices to which counsel refer are to be construed as coming within the provisions of the Act are questions which will arise when the proper case is presented."

To say that the statute would be unconstitutional if applied to such exactions is not to say that the section cannot constitutionally apply to exactions which the legislature could have thought coercive, oppressive or otherwise unjust. It is not denied that labor organizations have indulged in such practices, and obviously we cannot assume in the face of the constitutional objections that they do not, or that the state could not make § 15 applicable to them. As the record presents no concrete case to which petitioners' contentions as to § 15 apply, we are unable to say whether its application in any given case not now before us would or would not be constitutional. *Liverpool, N. Y. & P. S. S. Co.* v. *Immigration Commrs., supra,* 39; *Barker Co.* v. *Painters' Union,* 281 U. S. 462, 463, 464. Determination of these questions as well as the proper construction of the section which is challenged as vague and indefinite must await its application to some specific state of facts.

Other contentions.

Only a word need be said as to various other objections not already disposed of, which have been raised but not seriously pressed. It is said that the requirement of § 7 to file information statements and reports is so burdensome on labor organizations as to deny due process of law. It is not denied but is affirmed that labor organizations are subject to regulation, *Allen-Bradley Local* v. *Board, supra,* and that in the interests of regulation the government may require information from those subject to it. *Thomas* v. *Collins,* 323 U. S. 516, 542; cf. *N. W. Bell Tel. Co.* v. *Ry. Comm'n,* 297 U. S. 471, 478; *Natural Gas Co.* v. *Slattery,* 302 U. S. 300, 306 and cases cited. It is said that in order to comply with the statute it would be necessary for each union, regardless of its size and finances, to hire public accountants or others with

specialized knowledge of accounting practices and procedure, such as working men do not have, and that such a requirement is beyond constitutional power. But these assertions are unsupported by the record. It does not show to what extent the transactions of petitioners, or any of them, are complicated or detailed or other facts which would enable us to say that petitioners are unable to comply with the statute without expert assistance. Since petitioners' reliance is upon the burdensome operation of the statute on them, we are not bound to speculate upon the nature or extent of the burden. We can hardly make pronouncement on their contentions in a declaratory judgment proceeding where the record does not disclose the extent of the burden, if any. Whether the information demanded is so extensive, detailed, and therefore burdensome, as to pass the bounds of what the state may reasonably require can be determined only in the light of the circumstances in which the statute is to be applied.

The objection that §§ 7 and 16 of the state statute are too vague and uncertain to meet constitutional requirements is one which cannot appropriately be considered in a declaratory judgment proceeding in the federal courts, in advance of their authoritative construction by a state court. As we have said, it is the duty of the federal courts to avoid the unnecessary decision of constitutional questions. *Siler* v. *Louisville & Nashville R. Co*, 213 U. S. 175, 191; *Light* v. *United States*, 220 U. S. 523, 538; *Blair* v. *United States*, 250 U. S. 273, 279; *Crowell* v. *Benson*, 285 U. S. 22, 62, and cases cited. But the use of the declaratory judgment procedure to test the validity of a state statute for vagueness and uncertainty invites rather than avoids the unnecessary decision of the constitutional question.

Most courts conceive it to be their duty to construe a statute, whenever reasonably possible, so that it may be constitutional rather than unconstitutional. *Stephenson* v. *Binford*, 287 U. S. 251; *Moore Ice Cream Co.* v. *Rose*, 289 U. S. 373, 379; *Screws* v. *United States*, No. 42, 1944 term, and cases cited; cf. *Spector Motor Co.* v. *McLaughlin*, 323 U. S. 101; *Ex parte Endo*, 323 U. S. 283. And the Alabama courts adhere to that rule. *Mobile* v. *Board*, 180 Ala. 489, 501; cf. *Duncan* v. *Rudulph*, 245 Ala. 175, 176; *Goodman* v. *Carroll*, 205 Ala. 305; *Cloverdale Homes* v. *Town of Cloverdale*, 182 Ala. 419. State courts, when given the opportunity by the presentation to them for decision of an actual case or controversy,

may, and often do, construe state statutes so that in their application they are not open to constitutional objections which might otherwise be addressed to them. *Cox* v. *New Hampshire*, 312 U. S. 569, 575; compare *Schuylkill Trust Co.* v. *Pennsylvania*, 302 U. S. 506 with *Schuylkill Trust Co.* v. *Pennsylvania*, 296 U. S. 113. In advance of an authoritative construction of a state statute, which the state court alone can make, this Court cannot know whether the state court, when called on to apply the statute to a defined case or controversy, may not construe the statute so as to avoid the constitutional question. For us to decide the constitutional question by anticipating such an authoritative construction of the state statue would be either to decide the question unnecessarily or rest our decision on the unstable foundation of our own construction of the state statute which the state court would not be bound to follow. *Spector Motor Co.* v. *McLaughlin*, *supra*, 105; see also *Vandenbark* v. *Owens-Illinois Co.*, 311 U. S. 538, 543; *Huddleston* v. *Dwyer*, 322 U. S. 232. Such is not the function of the declaratory judgment.

The extent to which the declaratory judgment procedure may be used in the federal courts to control state action lies in the sound discretion of the Court. See *Great Lakes Co.* v. *Huffman*, *supra*. It would be an abuse of discretion for this Court to make a pronouncement on the constitutionality of a state statute before it plainly appeared that the necessity for it had arisen, or when the court is left in uncertainty, which it cannot authoritatively resolve, as to the meaning of the statute when applied to any particular state of facts. In any event the parties are free to litigate in the state courts the validity of the statute when actually applied to any definite state of facts, with the right of appellate review in this Court. In the exercise of this Court's discretionary power to grant or withhold the declaratory judgment remedy it is of controlling significance that it is in the public interest to avoid the needless determination of constitutional questions and the needless obstruction to the domestic policy of the states by forestalling state action in construing and applying its own statutes. See *Great Lakes* v. *Huffman*, *supra*, 300, *et seq.*

The contention that the Act denies equal protection because its provisions, or some of them, have not been extended to business corporations or associations or to labor organizations which are

subject to the Railway Labor Act, 45 U. S. C. § 151 *et seq.*, is without substance. The Constitution does not oblige a state to regulate or reform all types of associations and organizations, or none. It may begin with such as in its judgment most need regulation. *Carroll* v. *Greenwich Insurance Co.*, 199 U. S. 401, 411; *Keokee Coke Co.* v. *Taylor*, 234 U. S. 224, 227; *Bunting* v. *Oregon*, 243 U. S. 426; *Sproles* v. *Binford*, 286 U. S. 374, 396; cf. *West Coast Hotel Co.* v. *Parrish*, 300 U. S. 379, 400, and cases cited. And for this reason it may exclude from regulatory measures organizations which it has reason to believe are already appropriately regulated by either state or national legislation. *Ziffrin, Inc.* v. *Reeves*, 308 U. S. 132, 140; cf. *Union Bank & Trust Co.* v. *Phelps*, 288 U. S. 181, 186.

We would not have granted certiorari to review so unsubstantial a question, and all the other issues, as presented by the record now before us, are, for reasons which we have given, inappropriate for decision in a declaratory judgment proceeding. The writ of certiorari will therefore be

Dismissed.